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Ideas on Liberty

JUNE 1971

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VOL. 21, NO. 6 • JUNE 1971

The Problem of Poverty — Henry Hazlitt — 323
The history of famine conditions and their alleviation through creative capitalism.

The High Price of Protectionism — Paul L. Poirot — 329
Paying men not to work is just one of the ways of closing the market and wasting scarce resources.

Am I Constantly Correcting? — Leonard E. Read — 332
Self-improvement is a process of constantly correcting; the market signals the opportunities.

Soviet Dissent: Heat without Light — Melvin D. Barger — 337
Freedom of the press a lost cause once socialistic interventions are introduced.

To a Student from Abroad — Arthur R. Hercz — 342
Do the best you can in the circumstances, and judge your success by those who choose to follow your example.

The Law School and Legal Training — Sylvester Petro — 344
How legal training and legal systems relate to the survival and the progress of the free society.

The Individual in Society — Ludwig von Mises — 349
"No government . . . can guarantee and bring about freedom otherwise than by supporting and defending the fundamental institutions of the market economy."

Individual Liberty and the Rule of Law — Ridgway K. Foley, Jr. — 357
Tracing the role of the law, and the limitations upon government, for the maximization of liberty.

Book Reviews: — 379
"The Red Decade" by Eugene Lyons
"Student Violence" by Edward Bloomberg

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The problem of poverty

HENRY HAZLITT

THE HISTORY of poverty is almost the history of mankind. The ancient writers have left us few specific accounts of it. They took it for granted. Poverty was the normal lot.

The ancient world of Greece and Rome, as modern historians reconstruct it, was a world where houses had no chimneys, and houses heated in cold weather by a fire on a hearth or a fire-pan in the center of the room, were filled with smoke whenever a fire was started, and where consequently the walls, ceiling, and furniture were blackened and more or less covered by soot at all times; where light was supplied by smoky oil lamps which, like the houses in which they were used, had no chimneys, and where eye-trouble as a result of all this smoke was general. Greek dwellings had no heat in winter, no adequate sanitary arrangements, and no washing facilities.[1]

Above all there was hunger and famine, so chronic that only the worst examples were recorded. We learn from the Bible how Joseph advised the pharaohs on famine relief measures in ancient Egypt. In a famine in Rome in 436 B.C., thousands of starving people threw themselves into the Tiber.

Conditions in the Middle Ages were no better:

"The dwellings of medieval laborers were hovels – the walls made of a few boards cemented with mud and leaves. Rushes and reeds or heather made the thatch

Henry Hazlitt is well known to FREEMAN readers as author, columnist, editor, lecturer, and practitioner of freedom. This article will appear as a chapter in a forthcoming book, *The Conquest of Poverty*, to be published by Arlington House.

[1] E. Parmalee Prentice, *Hunger and History* (Harper & Bros., 1939), pp. 39-40.

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for the roof. Inside the houses there was a single room, or in some cases two rooms, not plastered and without floor, ceiling, chimney, fireplace, or bed, and here the owner, his family, and his animals lived and died. There was no sewage for the houses, no drainage, except surface drainage for the streets, no water supply beyond that provided by the town pump, and no knowledge of the simplest forms of sanitation. 'Rye and oats furnished the bread and drink of the great body of the people of Europe.' . . . 'Precariousness of livelihood, alternations between feasting and starvation, droughts, scarcities, famines, crime, violence, murrains, scurvy, leprosy, typhoid diseases, wars, pestilences and plagues' – made part of medieval life to a degree with which we are wholly unacquainted in the western world of the present day."[2]

Frequent Famines

And, ever-recurring, there was famine:

"In the eleventh and twelfth centuries famine [in England] is recorded every fourteen years, on an average, and the people suffered twenty years of famine in two hundred years. In the thirteenth century the list exhibits the same proportion of famine; the addition of high prices made the proportion greater. Upon the whole, scarcities decreased during the three following centuries; but the average from 1201 to 1600 is the same, namely, seven famines and ten years of famine in a century."[3]

One writer has compiled a detailed summary of twenty-two famines in the thirteenth century in the British Isles, with such typical entries as: "1235: Famine and plague in England; 20,000 persons die in London; people eat horseflesh, bark of trees, grass, etc."[4]

But recurrent starvation runs through the whole of human history. The *Encyclopaedia Britannica* lists thirty-one major famines from ancient times down to 1960. Let us look first at those from the Middle Ages to the end of the eighteenth century:

1005: famine in England. 1016: famine throughout Europe. 1064-72: seven years' famine in Egypt. 1148-59: eleven years' famine in India. 1344-45: great famine in India. 1396-1407: the Durga Devi famine in India, lasting twelve years. 1586: famine in England

[2] *Ibid.*, pp. 15-16.

[3] William Farr, "The Influence of Scarcities and of the High Prices of Wheat on the Mortality of the People of England," *Journal of the Royal Statistical Society*, Feb. 16, 1846, Vol. IX, p. 158.

[4] Cornelius Walford, "The Famines of the World," *Journal of the Royal Statistical Society*, March 19, 1878, Vol. 41, p. 433.

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giving rise to the Poor Law system. 1661: famine in India; no rain fell for two years. 1769-70: great famine in Bengal; a third of the population – 10 million persons – perished. 1783: the Chalisa famine in India. 1790-92: the Deji Bara, or skull famine in India, so called because the dead were too numerous to be buried.[5]

This list is very incomplete – as probably any list would be. In the winter of 1709, for example, in France, more than a million persons, according to the figures of the time, died out of a population of 20 millions.[6] In the eighteenth century, in fact, France suffered eight famines, culminating in the short crops of 1788, which were one of the causes of the Revolution.

I am sorry to be dwelling in such detail on so much human misery. I do so only because mass starvation is the most obvious and intense form of poverty, and this chronicle is needed to remind us of the appalling dimensions and persistence of the evil.

Thomas R. Malthus

In 1798, a young English country parson, Thomas R. Malthus, delving into this sad history, anonymously published an *Essay on the Principles of Population as it affects the Future Improvement of Society.* His central doctrine was that there is a constant tendency for population to outgrow food supply and production. Unless checked by self-restraint, population will always expand to the limit of subsistence, and will be held there by disease, war, and ultimately famine. Malthus was an economic pessimist, viewing poverty as man's inescapable lot. He influenced Ricardo and the other classical economists of his time, and it was the general tone of their writings that led Carlyle to denounce political economy as "the Dismal Science."

Malthus had in fact uncovered a truth of epoch-making importance. His work first set Charles Darwin on the chain of reasoning which led to the promulgation of the theory of evolution by natural selection. But Malthus greatly overstated his case, and neglected to make essential qualifications. He failed to see that, once men in any place (it happened to be his own England) succeeded in earning and saving a little surplus, made even a moderate capital accumulation, and lived in an era of political freedom and protection for property, their liberated industry, thought, and invention could at last make it possible for them enormously and accelera-

[5] Article "Famine," 1965 edition.

[6] Gaston Bouthoul, *La population dans la monde*, pp. 142-43.

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tively to multiply per capita production beyond anything achieved or dreamed of in the past. Malthus announced his pessimistic conclusions just in the era when they were about to be falsified.

The Industrial Revolution had begun, but nobody had yet recognized or named it. One of the consequences of the increased production it led to was to make possible an unparalleled increase in population. The population of England and Wales in 1700 is estimated to have been about 5,500,000; by 1750 it had reached some 6,500,000. When the first census was taken in 1801 it was 9,000,000; by 1831 it had reached 14,000,000. In the second half of the eighteenth century population had thus increased by 40 per cent, and in the first three decades of the nineteenth century by more than 50 per cent. This was not the result of any marked change in the birth rate, but of an almost continuous fall in the death rate. People were now producing the food supply and other means to support a greater number of them.[7]

This accelerating growth in population continued. The enormous forward spurt of the world's population in the nineteenth century was unprecedented in human experience. "In one century, humanity added much more to its total volume than it had been able to add during the previous million years."[8]

Starvation in Recent Times

But we are getting ahead of our story. We are here concerned with the long history of human poverty and starvation, rather than with the short history of how mankind began to emerge from it. Let us come back to the chronicle of famines, this time from the beginning of the nineteenth century:

1838: intense famine in North-Western Provinces (Uttar Pradesh), India; 800,000 perished. 1846-47: famine in Ireland, resulting from the failure of the potato crop. 1861: famine in northwest India. 1866: famine in Bengal and Orissa; 1,000,000 perished. 1869: intense famine in Rajputana; 1,500,000 perished. 1874: famine in Bihar, India. 1876-78: famine in Bombay, Madras, and Mysore; 5,000,000 perished. 1877-78: famine in north China; 9,500,000 said to have perished. 1887-89: famine in China. 1891-92: famine in Russia. 1897: famine in India; 1,000,000 perished. 1905: famine in Russia.

[7] T. S. Ashton. *The Industrial Revolution (1760-1830)* (Oxford University Press, 1948.), pp. 3-4.

[8] Henry Pratt Fairchild, "When Population Levels Off," *Harper's Magazine*, May, 1938, Vol. 176, p. 596.

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1916: famine in China. 1921: famine in the U.S.S.R., brought on by communist economic policies; at least 10,000,000 persons seemed doomed to die, until the American Relief Administration, headed by Herbert Hoover, came in and reduced direct deaths to about 500,000. 1932-33: famine again in the U.S.S.R., brought on by Stalin's farm collectivization policies; "millions of deaths." 1943: famine in Bengal; about 1,500,000 perished. 1960-61: famine in the Congo.[9]

Industrialization Prevents Famine in Western World

We can bring this dismal history down to date by mentioning the famines in recent years in Communist China and the war-created famine of 1968-70 in Biafra.

The record of famines since the end of the eighteenth century does, however, reveal one striking difference from the record up to that point. Mass starvation did not fall on a single country in the now industrialized Western world. (The sole exception is the potato famine in Ireland; and even that is a doubtful exception because the Industrial Revolution had barely touched mid-nineteenth century Ireland – still a one-crop agricultural country.)

It is not that there have ceased to be droughts, pests, plant diseases, and crop failures in the modern Western world, but that when they occur there is no famine, because the stricken countries are quickly able to import foodstuffs from abroad, not only because the modern means of transport exist, but because, out of their industrial production, these countries have the means to pay for such foodstuffs.

In the Western world today, in other words, poverty and hunger – until the mid-eighteenth century the normal condition of mankind – have been reduced to a residual problem affecting only a minority; and that minority is being steadily reduced.

But the poverty and hunger still prevailing in the rest of the world, in most of Asia, of Central and South America, and of Africa – in short, even now afflicting the great majority of mankind – show the appalling dimensions of the problems still to be solved.

And what has happened and is still happening in many countries today serves to warn us how fatally easy it is to destroy all the economic progress that has already been achieved. Foolish governmental interferences led the Argentine, once the world's principal

[9] From articles "Famine" and "Russia," *Encyclopedia Britannica*, 1965 edition.

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producer and exporter of beef, to forbid in 1971 even domestic sale of beef on alternate weeks. Soviet Russia, one of whose chief economic problems before it was communized was to find an export market for its huge surplus of grains, has been forced to import grains from the capitalist countries. One could go on to cite scores of other examples, with ruinous consequences, all brought on by short-sighted governmental policies.

More than thirty years ago, E. Parmalee Prentice was pointing out that mankind has been rescued from a world of want so quickly that the sons do not know how their fathers lived:

"Here, indeed, is an explanation of the dissatisfaction with conditions of life so often expressed, since men who never knew want such as that in which the world lived during many by-gone centuries, are unable to value at its true worth such abundance as now exists, and are unhappy because it is not greater."[10]

How prophetic of the attitude of rebellious youth in the 1970's! The great present danger is that impatience and ignorance may combine to destroy in a single generation the progress that it took untold generations of mankind to achieve.

"Those who cannot remember the past are condemned to repeat it."

[10] *Hunger and History* (Harper & Bros., 1939), p. 236.

IDEAS ON LIBERTY

Creative Energy

AT ONE TIME or another, every conceivable form of authority has been tried, but each has failed for the simple reasons that:

1. Only an individual human being can generate human energy.
2. Only an individual human being can control the energy he generates.

The lack of understanding of these simple, basic truths has, for over 6,000 years, stagnated human progress and kept the vast majority of people underfed, poorly clothed, embroiled in wars, and dying from famine and pestilence.

HENRY GRADY WEAVER, *The Mainspring of Human Progress*

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PAUL L. POIROT

THE HIGH PRICE of PROTECTIONISM

UNLESS you use tires on your car, the headline might have meant nothing to you: *Michelin Unit Pays Union $250,000 for Not Working.*[1]

The French tire manufacturing company estimated the man hours it would take for union workers to assemble tire-making machinery in its plants being built at Granton and Bridgewater in Canada, and agreed to pay the union $250,000 if the men stop insisting that they do the job.

Michelin wanted its own experienced workers to install the specialized machinery and equipment, rather than have it done by the millwrights of Local 1178 of the United Brotherhood of Carpenters and Joiners. The payment was offered to the union, on behalf of some 60 millwrights, to avert the possible loss of several million dollars due to the direct and indirect repercussions of threatened strike action.

Just what does it mean to a tire user if one of the manufacturers – in this case, a Canadian branch of a French firm – spends $250,000 to avoid the possible loss of several million dollars? Does it mean higher-priced tires, or lower-priced tires, or what? We probably can't know for sure. Is this Canadian branch of Michelin Tire the marginal producer who would be driven out of business by costly strike action? If so, his going out of business might well have resulted in higher-priced tires. And paying 60 union members not to work, if it kept a marginal producer in business, might mean tires at lower prices than otherwise would have prevailed. It's not that easy to judge the impact on

[1] *Wall Street Journal*, April 9, 1971.

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the market of the action taken by Michelin in this instance. All we can judge, with reasonable assurance, is that Michelin management used available resources as best it knew how, at its own risk, to supply quality tires to consumers at the least possible cost.

The Waste of Resources

If paying union members not to work seems like a funny way to run a tire business, save some of the chuckles for the untold numbers of other firms in countless lines of business in all parts of the world who face similar problems each day they operate. And try to understand that in the final analysis it's invariably the customer who pays – either in higher prices, or in purchases never consummated – whenever labor unions or other quasi-governmental agencies of coercion indulge in the sort of monkey business that tends to corner or close off some segment of the market, thus disrupting peaceful production and trade.

If the $250,000 payment by Michelin to keep the union from striking its business seems like a flagrant waste of scarce resources, consider the $150,000,000,000 – six hundred thousand times as much – currently turned over by government to various welfare programs in the United States in a year. Every dollar's worth of goods and services coercively diverted from the market for each and every one of the governmental welfare programs – just like the $250,000 payment by Michelin – is, in effect, paying somebody not to work. Such intervention withdraws scarce resources from the market and diverts those resources to purposes for which consumers presumably are unable or unwilling to pay. And so far as the paying customers are concerned, such a diversion of resources amounts to waste. They just aren't getting any tires, or anything else they want, for those expenditures. Such diverted resources go instead to "buy off" the union, or some other politically powerful pressure group, in order that the Michelins and other market operators may continue to function peacefully to serve willing customers.

Closing the Market

This is not to condone featherbedding and various other make-work practices by labor unions under their grants of special privilege by government. But the total amount of extortion and waste and disruption due to union practices *under government sanction* is a mere trifle in comparison to the amount of direct government intervention now undertaken in the name of the "general welfare." The government not only winks at

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and condones the $250,000 dab of extortion exacted from Michelin by the United Brotherhood of Carpenters and Joiners; it not only fails in its proper function of protecting the lives and property of peaceful citizens; but, worse yet, the government itself has usurped the role of chief extortioner, in Canada, in the United States, indeed in every nation where governmental activities are currently withdrawing from the market somewhere between a third and a half of all economic resources. In other words, instead of allowing peaceful and productive individuals maximum opportunity to specialize and trade in their own best interest, the government takes a third to a half of what each produces and diverts it to purposes the producer had not intended, redistributes some of it to those who have produced little, if anything, of value to consumers. From a third to a half of the market is closed – a third to a half of scarce resources literally are wasted.

This is not to deny that there is a proper role for government – the role of policing the market and protecting lives and property. It is to assert that governments everywhere today have largely forsaken their proper role – they are not protecting lives and property – instead, they are plundering peaceful and productive persons and subsidizing wastrels and troublemakers.

Paying tribute to coercionists is indeed a sorry way to operate a business. But citizens who will let their own government close the market, sell protectionism to powerful lobby groups, and otherwise abandon its principled role, scarcely deserve a better fate, for they have given no thought and no support to freedom.

IDEAS ON LIBERTY

The Apprenticeship of Liberty

NOTHING is more fertile in prodigies than the art of being free; but there is nothing more arduous than the apprenticeship of liberty.... Liberty is generally established with difficulty in the midst of storms; it is perfected by civil discords; and its benefits cannot be appreciated until it is already old....

The advantages that freedom brings are shown only by the lapse of time, and it is always easy to mistake the cause in which they originate.

ALEXIS DE TOCQUEVILLE, *Democracy in America* (1835)

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Am I Constantly Correcting?

LEONARD E. READ

EVERYTHING that happens – pleasant or unpleasant – has a lesson to teach, provided instruction is sought in every event. Here is an example of how two words, dropped in more or less idle conversation, conveyed an important lesson to me.

Having discovered that my newfound friend had a plane of his own, I inquired as to his flying experience. He began by telling about his pilot's license to fly small craft in good weather: VFR (visual flight rules). That, however, was not enough for him; he wished to qualify for the kind of all-weather flying allowed commercial airline pilots. Therefore, as a minimum, he had to obtain an IFR (instrument flight rules) rating.

During the final briefing, prior to the official IFR exam, the instructor explained why he was so intently observing every move: "I am not checking as to whether you are on course or off but only to make absolutely certain that you are scanning those instruments and *constantly correcting*."

Constantly correcting! That instructor probably had not thought of himself as a philosopher. Yet, it seems to me, he made a profound philosophic point: the discipline required for flying by instruments also applies to living by numerous, basic guidelines. To live the good life requires constant correcting, achieved by a constant and faithful scanning of the guidelines.

Learning to fly within seeing distance of a runway in clear weather is possible for anyone competent to drive a car. But learning to fly long distances over

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unfamiliar territory, by day or by night, and in all kinds of weather, is quite a different matter. The further one ventures from what can be easily observed, the greater is the chance of error – of getting off course – and the more necessary is constant and skillful correction. Truly, those of a venturesome spirit expand their horizons, provided they observe the rule: constant correction.

Analogous to simple flying is the life of primitive peoples. Not much in the way of correction is required of Kalahari bushmen, for instance; they only forage. These little people have no trouble staying on course for they have few courses to pursue beyond chasing wild animals or finding their way to nature's scant offerings of nuts, roots, herbs, water. At their level of life, there is little, if anything, requiring correction.

However, not everyone has been content with primitive life. Millions, with a somewhat venturesome spirit, have chosen to broaden their horizons. In doing so, they have to strike out into new, unfamiliar, and increasingly complex relationships. And the more they break with simple ways and traditions, the less there is to go by – off "into the wild, blue yonder," as an Air Force song has it. They must learn to fly by instruments. The further they venture, the greater the risk of getting off course; each must keep asking himself, "Am I constantly correcting?"

Individual vs. Collective

To sustain a complex society we must observe numerous basic guidelines: political, economic, moral-ethical, spiritual.

For example, the Golden Rule is the oldest, ethical guideline of distinctive universal character. Many people are capable of abiding by this nonviolence rule in simple relationships or close at home, as we say. But note how difficult it is to practice this basic precept in societies featured by special interest groups: axe-grinding collectives. More and more the tendency is to try to rule over others rather than to respect and treat them justly.

Only the individual has combined powers of reason and self-control by which to refrain from doing to others that which he would not have another do unto him. Such personal attention to responsibility tends to be lost when individuals are absorbed into special interest groups; these collectives have no perceptual powers, none whatsoever!

How did we stray so disastrously off course and wander into this special interest, collectivistic situation in the first place? Quite simple! Individuals – millions of them

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– failed *constantly to correct* their moral and ethical positions as they ventured toward expanding horizons. By taking their eyes off one of the most important guidelines, they surrendered their individuality and lost themselves in the numerous collectives. A collective can no more practice the Golden Rule than it can think, and the same is true of persons who allow themselves to become collectivized.

There are other guidelines on the societal instrument panel which must be scrupulously heeded if we would stay on course. Among them are the *Ten Commandments*. I shall choose two at random, sufficient to make my point.

Take "Thou shalt not steal" and note how easy it is to stray off course unless one is constantly correcting. How many among us will personally rob another? Perhaps one in ten thousand! The vast majority of us would starve before snatching another's purse. Personal observance of this Commandment is so much a part of our heritage that honest behavior is little more than doing what comes naturally. And who will contend that it should be otherwise? Such a person can hardly be found; nearly everyone believes that this is a good guideline.

But observe what has happened to these "honest" millions, the ones in the United States. The vast majority who would not snatch a purse to gain a few dollars will now advocate schemes taking not less than $150 billion annually. They will take a substantial part of each other's income and capital and do so without the slightest qualm. Most of them, as they feather their own nests at the expense of others, will think of these actions as righteous rather than sinful. Why so far off course?

Depersonalizing the Act

First, is the depersonalization of the action; the taking is not done on anyone's personal responsibility but in the name of some so-called social good or group. Second, this taking has been legalized which, to nonthinkers, makes the action seem all right. And third, these people apparently have had no instructor who said, "I am not checking as to whether you are on course or off but only to make absolutely certain that you are constantly correcting." They have taken their eyes off the instrument panel – off this guideline – and are now so far into "the wild, blue yonder" that they regard taking each other's substance as benevolence. Petty thievery they reject; coercive taking from each other on the grand scale they accept. "Thou shalt not steal" has become a mere Biblical tag line in-

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stead of a hazard-avoiding guideline.

What about "Thou shalt not kill"? No need to labor the answer, for to do so would be a repetition of the stealing explanation. Few, indeed, would personally commit murder, any more than a wolf will kill his kind.[1] Yet, people in the most "advanced" nations will engage in mass slaughter and, if proficient enough, receive medals for so doing! And for precisely the same reasons that they steal from each other on the grand scale: failure to look to this guideline on the societal instrument panel and *constantly correct*. That most people from all walks of life really believe in this Commandment as a correct guideline is attested by their strict observance of it in personal relationships.

Market Pricing

Let us now refer to one among numerous economic guidelines: If exchange is voluntary, everybody gains; otherwise, one man's gain is another's loss. Behind this remarkable guideline lies the subjective theory of value. This was no invention but a discovery. Carl Menger (1870) merely observed how people behave among themselves when free to act voluntarily. What he discovered is as simple as the Golden Rule: The value of any good or service is whatever another or others will give in willing exchange. If I swap two hours of my labor for your goose, the value of my labor is your goose and the value of your goose is my labor. Observe that each of us – subjectively, that is, in our respective judgments – gains by the exchange. I value the goose more than my labor and you value my labor more than your goose or we would not trade one for the other. Even a child can understand this basic economic guideline if it is explained correctly.[2]

The free market of voluntary exchanges, based on each person's judgment or choice of values, affords the pricing information each participant needs to tell him instantly what is relatively scarce or relatively abundant, whether to consume or to save, to buy or to sell, to produce more or less of

[1] See "Morals and Weapons," the final chapter in *King Solomon's Ring* by Konrad Z. Lorenz who, according to Julian Huxley, is "one of the outstanding naturalists of our times." In paperback (New York: Thomas Y. Crowell Co., 1961).

[2] For an explanation of why the subjective theory of value is not more generally comprehended, see "The Dilemma of Value," in *Talking to Myself* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, N. Y., 1970), pp. 81-88. And for a suggestion as to how this theory can be taught to children, see "Economics for Boys and Girls." Copy on request.

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this or that – market price guidelines for constant correcting.

Today, millions of exchanges are not willingly but coercively made. Samples: The part I have been forced to pay for the Gateway Arch, urban renewal and "full employment" projects, going to the moon, and so on. Reflect on the unwilling exchanges labor unions coercively exact from their own members as well as employers. The individual's judgment of value and desire to trade are disregarded. Exchanges are unwillingly effected. This is a substitution of warlike, antagonistic relationships for the peaceful, harmonious ways of the free market. This sort of exchange can no more persist or survive than can a society of thieves. Such a dog-eat-dog arrangement has to spell disaster.

Why this economic nonsense? We have been staring into "the wild, blue yonder" and failing to heed this and other simple guidelines on the societal instrument panel. Ours is a miserable record because we are not constantly correcting.

Finally, it makes little difference what aspect of life one examines; the further we venture from the ordinary, the traditional, the habitual, the greater the risk of losing our way.

Take my own case, for instance. I have been delving into the free market, private ownership, limited government way of life, along with its moral and spiritual antecedents for four decades, and the more I probe, the easier it is to get off course. As one explores the wonderful potentialities of the free society, the further one departs in his thinking from the socialistic world in which we live. It gets pretty misty up here in the ivory tower – the ideal – and unless one is constantly correcting – that is, forever referring to the societal instrument panel with its accurate guidelines – one is hopelessly lost.

If we would edge our way out of the political interventionist hodgepodge in which we presently find ourselves, we need to heed the basic guidelines. The way we live our lives at the personal level is demonstration enough that we believe in the accuracy of these instruments. So, regardless of how far we venture, now on course and then off, *constantly correct*! This is the way to continuously expand our horizons in safety.

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Soviet Dissent: Heat without Light

MELVIN D. BARGER

YOU COULD FEEL passion and spirit in the storm of protest rolling over the world intellectual community when it was announced last November that Soviet Novelist Aleksandr Solzhenitsyn would not be allowed to accept his Nobel prize in person.

Like Boris Pasternak 12 years before him, the brilliant Solzhenitsyn became an instant martyr. His case was hot news in the western press, a *cause célèbre* among the intelligentsia. His plight was one more depressing example of the Soviets' heavy-handed approach to the arts. It raised fears that the mild liberties of the post-Stalin era were fading, that a new period of harsh subjugation was setting in. Would it now be more concentration camps and terrorism, repeats of the thing Solzhenitsyn wrote about so well in his best-selling *One Day in the Life of Ivan Denisovich*?

There was also speculation of a hopeful nature. Solzhenitsyn and his fellow artists, so this thread of reasoning went, were really driving a thin wedge of freedom in Russia. This thin wedge would some day split apart the Kremlin walls, opening the way for real freedom of expression.

But to anybody who has studied the Soviet Union, both the fears and the hopes of the Solzhenitsyn case are unrealistic and naive. It makes good newspaper copy, but little difference in Soviet life. It also ignores the realities of socialism. It is heat without light.

One problem of the Solzhenitsyn case is that most of his champions are socialists themselves, leaning towards government ownership or control of production facilities.

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They do not understand the role of private property in the implementation of intellectual freedom. There is also a certain snobbishness in this defense of a distinguished author. In other words, the Soviets are wrong in suppressing a creative person, but entirely justified in regimenting factory workers and collective farmers. Finally, the intellectuals do not understand why the Soviet government, and probably any government organized along socialist lines, must curtail intellectual freedom.

Outside My Field

This lack of understanding was revealed in the remarks of the noted Russian cellist, Mstislav Rostropovich, who not only defended Solzhenitsyn but also permitted the author to share his home. Rostropovich said, "The political and economic questions of our country are not my business. There are people who know these fields better than I. But please explain to me why in our literature and art the decisive word comes so often from people who are absolutely unqualified."

Rostropovich gave away the ball game by conceding that the political and economic questions were not his business. In agreeing to the right of the Soviet dictatorship to run the country from top to bottom, owning and controlling most property, he in effect signs away his right to make decisions in the fields of literature and art. Being a product of the Soviet Union and its educational system, he can be excused for this erroneous reasoning. But what can be said for his fellow intellectuals and artists in the Western nations who should know better, and yet constantly work to impose socialism on the rest of the world?

A large number of them carefully avoid any argument that lays the restrictions of Soviet artists at the door of socialism. The villain is the man Stalin, rather than socialism itself. Hence the frequent use of the term "Stalinism." The aim of this apparent differentiation may be to suggest that Stalinism is wrong and hateful, while socialism can be decent and humanitarian.

But the Soviet leaders themselves, whatever their other shortcomings, make little attempt to cooperate with this theory. They unashamedly require artists and writers to serve the system and to present only what is called *socialist realism.* In actual practice, this turns out to be work that follows the party line at a particular time. As for the writers and artists themselves, they must be people who do not give signs of becoming troublesome.

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The Reality of Power

Solzhenitsyn was rather unique among Soviet writers in being allowed to publish *One Day in the Life of Ivan Denisovich,* an attack on the prison camps of Stalinist days. This was interpreted in the West as the beginning of a change in the rigidities of *socialist realism.* But that was only because Western intellectuals do not understand the realism of socialists in power. There was a need, on Nikita Khrushchev's part, to assign Soviet crimes to the ghost of Stalin, and the Solzhenitsyn book helped serve that end. Khrushchev had not become so liberal that he would have permitted publication of a book attacking his own programs. Nor would a book have been permitted if it argued that socialism itself had been the evil behind the concentration camps.

Far from being a change in the Soviet system itself, the liberalism of the Khrushchev days was just a minor adjustment. There was no intention at any time of permitting anything like real intellectual freedom or freedom of the press. It is doubtful that such concepts ever were understood in the Soviet Union. The men in power would no more permit an author to publish freely than they would permit a factory manager to use machines to produce and sell products under his own brand name. This kind of thing is not perceived as being consistent with socialist realism.

In fact, one could even argue quite convincingly that Soviet leaders would be derelict in their duty if they permitted authors to publish freely. The Soviet state owns all the newspapers, magazines, and printing plants in the USSR. This is an immense publishing network which annually turns out thousands of newspapers, more than 4,000 magazines, and at least 80,000 different books and pamphlets. Like most owners of publishing facilities, the Soviet state prints the materials that get official approval, and rejects the rest. Private publishers in America and Europe do the same thing, but with a great deal more sophistication and for different purposes. A private publisher in America, for example, may print material he dislikes, if he knows that it will sell. Or he will print letters and other writings that oppose his point of view, the rationale being that it gets readership and also presents him as a fair person.

But the profit aims and fairness practices need not be observed in a socialist state where there are no alternate publishing sources. It is even doubtful that we would find all points of view being published in the United States if the government became the single

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owner or regulator of all printing. Despite our long traditions of free speech and expression, a great deal of material would end up in the ash can if the U.S. Government Printing Office were the sole publisher. The author in the United States has the protection of the First Amendment, but this would be virtually meaningless if all of his likely publishers were under government ownership. It is the diversity of publishing sources as well as the First Amendment that helps advance freedom of the press.

No Credit to Private Enterprise

The astonishing thing, however, is that private enterprise gets virtually none of the credit for the free expression enjoyed by intellectuals in the Western nations. There's also irony in the fact that some of the outstanding works of Soviet writers never would have reached printed form without the hated capitalist press. Pasternak's *Doctor Zhivago,* for example, was first published in Italy by a private publisher with socialist views. Worse yet, even the fallen Khrushchev, though never repudiating the socialist philosophy, finally had to deal with private publishers in order to print his memoirs. One wonders how any of these people would have found self-expression had the socialist goal of world-wide state ownership of production been reached.

The writers in Western nations, if they give the matter any thought, apparently feel that a socialist America or England will always provide for the expression of different points of view. They are under this delusion because they have been accustomed to the free market place of publishing in their own countries. They easily forget that hard economic decisions are necessary in all publishing, and that somebody must decide to allocate scarce resources for the production of a certain book or pamphlet.

In the harsh Soviet regime, those decisions are made by party leaders who are guided by socialist realism rather than the profit motive. But how would publishing decisions be made in the United States or England if all ownership rights resided in the government?

Like it or not, these government publishing officials would have to be guided by socialist realism. In the early stages, they would probably make a token show of presenting all points of view. But with the consolidation of their power and the arrogance typical of social reformers, they would soon find the will and suitable rationalizations for rejecting work they did not like.

We can see the beginnings of

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such practices today in the socialists who want to extend the government's control over advertising and the television networks. There is a great deal of pressure to establish government guidelines on TV programs for children. It does not take a lot of imagination to see that such controls, if accepted for one group, will soon be enlarged to include other groups. There is always a high-sounding purpose behind such measures, but they are not greatly different from socialist realism. In a government-owned or -controlled communications system, the aims must always be the service of the state, and only secondarily the self-expression of the creative artists. This is as true for the United States as it is for Russia or Red China.

That being the case, it is likely that we will continue having protests on behalf of the Soviet Union's Pasternaks and Solzhenitsyns, but no way will be found to implement the writer's freedom in Russia. It takes more than heated protest to provide effective dissent. It also requires the light of understanding; in this case, an understanding of how the free market place works and how it automatically provides for the expression of many points of view.

More than most people, artists and writers need the commercial world that many of them detest. They need the free market place, because the market place for goods and services is also the market place for literary and artistic works. They need to live and work in a climate of freedom – freedom for everybody, and not just privileges for the favored few who serve the regime. Until the world's intellectuals insist on that kind of freedom for the Soviet Union, they are wasting their time defending men like Solzhenitsyn. And nobody knows that fact better than the socialist realists who hold the real power in the Soviet Union.

The Question of Freedom

IDEAS ON LIBERTY

WE SHOULD REMEMBER that in an area controlled by such a process as national socialism, or any similar philosophy of governmental direction, the question and definition of what human personality is, and what human rights and fundamental freedoms are, rest with the dominant political power.

RUSSELL J. CLINCHY, "Human Rights and the United Nations"

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To a Student from Abroad

Dear ———:

I am glad to hear that you are enjoying your stay in this country and are profiting by your schooling. You say you are impressed by our great cities, the wealth of our ordinary citizens and their friendliness. This is not surprising, considering that you come from a relatively more primitive land. America was like that not long ago. You say you would like to stay and live here; but if you did you would probably find that our people are much like those everywhere else. There are a few bad ones, some energetic ones who try to improve things according to their own various ideas, and a great majority who passively accept the leadership and example of one or the other of these natural leaders.

You were sent here, not so much to learn our ways, as to learn how to help improve your own country. You cannot convert your community into a replica of America, nor is there any reason why you should try. The people of each community have their own characteristics, standards, and ideals. Rather than try to imitate America as it is now, I suggest you study our early and frontier development to find what lessons, methods, and institutions were successfully used then in the process of our development. Some of these methods may be adaptable to the objectives and conditions of your own country. Hopefully, other ideas will suggest themselves to you which are specifically applicable in your own case.

Don't expect, when you return, that people will eagerly await your words of wisdom, all set to work and promptly convert the

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area into the idealized model you have in mind for them. There will be some positive opposition to change, a lot of indifference, and in some cases older and more experienced heads who have different ideas as good as yours, if not better.

To start, I would suggest that you exert your influence by setting a personal example. Fix up your own home according to the standards of order, convenience, and sanitation you have learned. Develop a craft or product or provide a service which will be in demand. Start with something simple and well within your capability, and maintain it at a high standard. If others start imitating you and give you competition, hopefully with improvements of their own, feel flattered that you have succeeded, not only in providing the service, but in creating a demand for it. If possible, after one success, branch out similarly into other fields. Your schooling here should start you off on many ideas. Pick the ones most appropriate to your community.

Some of your projects won't work out. In that case, drop them and try something else. Many of your efforts will be ridiculed, especially when they fail. When they do succeed, someone else will try to take the credit. Don't let this discourage you. If you succeed in your programs and manage to raise your own standard of living above that of the rest of the people, envy and jealousy are likely to cause disagreeable incidents. This is the inevitable reaction of those who want the benefits of progress without contributing to it. You will have to take your satisfaction by observing the progress of your imitators and the benefits derived from the use of your innovations. I do wish you every success.

Sincerely,

Arthur R. Hercz

Mr. Hercz, retired after 26 years of Army service, recently earned a Master's degree in History in preparation for teaching.

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The Law School and Legal Training

SYLVESTER PETRO

WHEN PEOPLE ask, "What do law schools do?" the impatient say: "Why, they turn out lawyers, of course!" But such an answer is much too short, for law schools do both more and less than turn out lawyers.

The word "lawyer" is a loose term referring to those persons who engage in one or another aspect of the complex set of activities known as the practice of law. In order to become a lawyer, let alone a *good* lawyer, you will have to do a great deal more than spend three years, however studiously, in law school. On the other hand, such training as you acquire can serve you well even though you are never admitted to the bar or never practice law a day in your life. It used to be that gentlemen who did not know what else to do with themselves in their early twenties went to law school merely in order to continue their education, or even only to pass the time. It wasn't a bad idea then and isn't now. Many legally trained persons have become outstanding men of business or politicians or writers or actors or sailors or teachers and even more unlikely things. There is no reason to suppose that such careers will be closed to present or future law students. On the contrary.

What law schools do, what they must do because they are not physically capable of doing anything else as long as they are staffed by lawyers and attended mainly by

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students who want to become lawyers—what they do is impart *legal training*. In order to understand what that means you will first have to see law schools in their social setting generally and in relation to the legal system particularly.

The Purpose of the Legal System

The legal system is that set of institutions, armed with physical force and directed by reason and good sense, which mankind asks to formulate and apply the norms necessary at least to the survival and at most to the progress of society. Church, school, home, and a vast number of other experiences all share in the task of forming public opinion on right and wrong, good and bad, desirable and undesirable. Neither the legal system as a whole nor the law schools have any monopoly on virtue, any exclusive competence or expertise in matters of morality or social utility. That private property should be protected, contracts enforced, and wrongful injury to the person compensated – these principles emerged from the minds of human beings long before the legal profession did; indeed they brought legal systems into existence. It was not the other way round.

The legal system and its personnel may and do contribute to the development of moral and ethical principles. But their main business is to see that *society's* norms are effectuated – their unique expertise, if any, is displayed to the extent that they do so consistently, coherently, and efficiently. Society demands compliance with and enforcement of its basic norms; the legal system purports to supply that enforcement.

And the law schools necessarily preoccupy themselves with study and teaching of the ways in which the legal system goes about its tasks. Among the elements of legal training which you will acquire in law school, then, is a grasp of the "machinery of justice" and how it works. Just as every person is in part what his genetic equipment makes him, so too does history play a significant role in the make-up of society, quintessentially so in the structure and operation of the legal system. Those who patronizingly say, "That's only legal history," miss a big point about law. Law can no more dissociate itself from its history than you can from your genes.

The History of the Law

All the law that human beings can study is historical law, composed of and shaped by yet more antecedent ideas and experience. It is law made in the past – remember, yesterday is already past

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– that rules the future. "Time present and time past are contained in time future, and all time is eternally present," the poet said, rightly. You will read many old cases in law school. Try not to be impatient with them. Approach them receptively and you will gain greatly. Human society did not begin the day you were born. And Somerset Maugham may have been right when he said that the central truths about mankind were much too important to its survival to go long undiscovered. The decalogue broods silently but potently among all law studies.

As you study cases, statutes, and learned commentaries, all composing the long historical sweep and evolution of legal institutions, you will become aware that human affairs are inordinately complicated and that governing those affairs is a correspondingly complex operation, challenging the highest faculties of mind and character. Your powers of reason, of identification and discrimination, of analysis and synthesis, will be tried, probably, as they have never been before. Unlike mathematics, the structure of which is shared by the formal, logical side of law, the legal system is forever dealing in empirical fact – and empirical fact involving, at that, the most complex activities known to man: his own.

No two transactions, no two relationships, hence no two cases, are ever identical. A rule or doctrine or formula which disposes beautifully of one set of facts – meting out what everybody agrees is perfect justice under law to the parties involved in that case – may founder if the facts change only a little. How far does a rule reach? Ah, that is the question. Before you get through law school you will be "reconciling," "distinguishing," and "harmonizing" decisions all over the place. You will have made at least a start in mastering the lawyerly arts and skills: imaginatively constructing cogent theories and developing a sense of which facts are critical, which relevant, and which irrelevant. And all this despite the probability that you will never be able to formulate these processes satisfactorily because they are so subtle and complex.

As a matter of fact, perhaps most litigation occurs because lawyers differ on the questions whether *this* case is ruled by *that*, which theory is applicable, and therefore which facts are relevant. It is a serious mistake to accept the common notion that law is a haven for the dull and the unimaginative. No area of human action provides a richer field for the subtle play of intellect and imagination.

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Do not fall into the error, however, of believing, because some areas of law are dubious and unclear and because some disputes can be resolved only in court, that there is no such thing as *law*, or that it is absolutely plastic. Like all great institutions, the law is working quietly all the time, at its best when most quietly, mainly outside the courtroom. Of the untold billions of human relationships, voluntary and involuntary, only an infinitesimally small fraction are resolved by direct recourse to the machinery of justice, and it is well that this is so; for any legal system which had to intervene physically into every human relationship would soon rupture itself. Our system of law is in the main cogent and clear and widely understood and respected. Were it not, we should be finding chaos at the center rather than at the fringes of our daily lives. Part of your legal training is concerned with going to court. All of it should be helping you to stay out of court, if your clients will cooperate.

The Study of Human Action

In performing the services which society and the legal system demand of them, the law schools must perforce attend dominantly to the kinds of tasks implicit in the foregoing; but a strange thing happens in the process. While you are dragging yourself through thousands of cases, statutes, hypothetical problems – all the while compelled to make some kind of sense of them, to *understand* them, and to learn how to use them – in the course of this sometimes oppressive process, you will acquire a grasp of human action, human nature, and human society exceeding in comprehensiveness and detail anything offered by any other formal course of study. You will see the plot of human life unfold in ways that make all but the greatest novels and plays seem pitifully thin. More than that, you will have the opportunity to develop habits of self-discipline, of precise thought, of tenacity in fact-analysis, and of coherent theorizing, which are universally useful, not only in law practice but in every phase of life in the complex, free society. Indeed, the survival and the progress of the free society are peculiarly the responsibility of the legally trained, for they are most intimately involved in the operation of its machinery. When law school gets a bit much for you, as it likely will more than once, remember what Alexis de Tocqueville said: "Nothing is more fertile in prodigies than the art of being free – and nothing is more arduous than the apprenticeship of liberty."

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I have emphasized the historical and the theoretical, the informational and the ratiocinative aspects of legal training because, as I have said, they comprehend the contributions that law schools are *uniquely* qualified to make. Many believe that the law schools should preoccupy themselves less with "technical training" and more with efforts to "improve the law" and thus become more "relevant." Maybe so. Society, the legal system, and the law schools are all in need of improvement, and more and more irrelevancies have crept into law-school curricula over the years, especially the recent years. However, that same legal training which has served so well in so many occupations is also the necessary prerequisite to genuine, stable progress in the law. It is fatuous to suppose that anything so infernally complicated as human society can be made to respond productively to ideas struck off impulsively by unqualified, unskilled, and immature persons. Durable improvement in any complex field can come only from persons profoundly conversant with that field. Cool, sustained study, knowledge as wide and full as possible, and a well-disciplined mind are indispensable to any solid contribution to the progress of society. Legal training in the classical sense is an unexcelled vehicle to the attainment of those consummately desirable objectives. If you are bound and determined while in law school to "reform" or "improve" things, try turning your energies to the improvement of your own legal training. You'll never regret it. For you will then, as all competent people finally do, learn how to focus your energies efficiently. You will curtly dismiss most "reform proposals," because most will be ill-considered, and you will concentrate on the few solid programs which, if you are fortunate, you will encounter in your life.

IDEAS ON LIBERTY

Private Property

WITHOUT a society in which life and property are to some extent secure, existence can continue only at the lowest levels — you cannot have a good life for those you love, nor can you devote your energies to activity on the higher level.

ALFRED NORTH WHITEHEAD, *Adventures of Ideas*

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the Individual in Society

LUDWIG VON MISES

THE WORDS freedom and liberty signified for the most eminent representatives of mankind one of the most precious and desirable goods. Today it is fashionable to sneer at them. They are, trumpets the modern sage, "slippery" notions and "bourgeois" prejudices.

Freedom and liberty are not to be found in nature. In nature there is no phenomenon to which these terms could be meaningfully applied. Whatever man does, he can never free himself from the restraints which nature imposes upon him. If he wants to succeed in acting, he must submit unconditionally to the laws of nature.

Freedom and liberty always refer to interhuman relations. A man is free as far as he can live and get on without being at the mercy of arbitrary decisions on the part of other people. In the frame of society everybody depends upon his fellow citizens. Social man cannot become independent without forsaking all the advantages of social cooperation.

The fundamental social phenomenon is the division of labor and its counterpart – human cooperation.

Experience teaches man that cooperative action is more efficient and productive than isolated action of self-sufficient individuals. The natural conditions determining man's life and effort are such that the division of labor increases output per unit of labor expended. These natural facts are: (1) the innate inequality of men with regard to their ability to perform various kinds of labor, and (2) the

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This article is extracted from his book, *Human Action* (Yale University Press, 1949: 3rd ed. Regnery, 1966).

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unequal distribution of the nature-given, nonhuman opportunities of production on the surface of the earth. One may as well consider these two facts as one and the same fact, namely, the manifoldness of nature which makes the universe a complex of infinite varieties.

Innate Inequality

The division of labor is the outcome of man's conscious reaction to the multiplicity of natural conditions. On the other hand, it is itself a factor bringing about differentiation. It assigns to the various geographic areas specific functions in the complex of the processes of production. It makes some areas urban, others rural; it locates the various branches of manufacturing, mining, and agriculture in different places. Still more important, however, is the fact that it intensifies the innate inequality of men. Exercise and practice of specific tasks adjust individuals better to the requirements of their performance; men develop some of their inborn faculties and stunt the development of others. Vocational types emerge, people become specialists.

The division of labor splits the various processes of production into minute tasks, many of which can be performed by mechanical devices. It is this fact that made the use of machinery possible and brought about the amazing improvements in technical methods of production. Mechanization is the fruit of the division of labor, its most beneficial achievement, not its motive and fountain spring. Power-driven specialized machinery could be employed only in a social environment under the division of labor. Every step forward on the road toward the use of more specialized, more refined, and more productive machines requires a further specialization of tasks.

Within Society

Seen from the point of view of the individual, society is the great means for the attainment of all his ends. The preservation of society is an essential condition of any plans an individual may want to realize by any action whatever. Even the refractory delinquent who fails to adjust his conduct to the requirements of life within the societal system of cooperation does not want to miss any of the advantages derived from the division of labor. He does not consciously aim at the destruction of society. He wants to lay his hands on a greater portion of the jointly produced wealth than the social order assigns to him. He would feel miserable if antisocial behavior were to become universal

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and its inevitable outcome, the return to primitive indigence, resulted.

Liberty and freedom are the conditions of man within a contractual society. Social cooperation under a system of private ownership of the means of production means that within the range of the market the individual is not bound to obey and to serve an overlord. As far as he gives and serves other people, he does so of his own accord in order to be rewarded and served by the receivers. He exchanges goods and services, he does not do compulsory labor and does not pay tribute. He is certainly not independent. He depends on the other members of society. But this dependence is mutual. The buyer depends on the seller and the seller on the buyer.

Self-Interest

The main concern of many writers of the nineteenth and twentieth centuries was to misrepresent and to distort this obvious state of affairs. The workers, they said, are at the mercy of their employers. Now, it is true that the employer has the right to fire the employee. But if he makes use of this right in order to indulge in his whims, he hurts his own interests. It is to his own disadvantage if he discharges a better man in order to hire a less efficient one. The market does not directly prevent anybody from arbitrarily inflicting harm on his fellow citizens; it only puts a penalty upon such conduct. The shopkeeper is free to be rude to his customers provided he is ready to bear the consequences. The consumers are free to boycott a purveyor provided they are ready to pay the costs. What impels every man to the utmost exertion in the service of his fellow men and curbs innate tendencies toward arbitrariness and malice is, in the market, not compulsion and coercion on the part of gendarmes, hangmen, and penal courts; it is self-interest. The member of a contractual society is free because he serves others only in serving himself. What restrains him is only the inevitable natural phenomenon of scarcity. For the rest he is free in the range of the market.

In the market economy the individual is free to act within the orbit of private property and the market. His choices are final. For his fellow men his actions are data which they must take into account in their own acting. The coordination of the autonomous actions of all individuals is accomplished by the operation of the market. Society does not tell a man what to do and what not to do. There is no need to enforce cooperation by

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special orders or prohibitions. Non-cooperation penalizes itself. Adjustment to the requirements of society's productive effort and the pursuit of the individual's own concerns are not in conflict. Consequently no agency is required to settle such conflicts. The system can work and accomplish its tasks without the interference of an authority issuing special orders and prohibitions and punishing those who do not comply.

Compulsion and Coercion

Beyond the sphere of private property and the market lies the sphere of compulsion and coercion; here are the dams which organized society has built for the protection of private property and the market against violence, malice, and fraud. This is the realm of constraint as distinguished from the realm of freedom. Here are rules discriminating between what is legal and what is illegal, what is permitted and what is prohibited. And here is a grim machine of arms, prisons, and gallows and the men operating it, ready to crush those who dare to disobey.

It is important to remember that government interference always means either violent action or the threat of such action. Government is in the last resort the employment of armed men, of policemen, gendarmes, soldiers, prison guards, and hangmen. The essential feature of government is the enforcement of its decrees by beating, killing, and imprisoning. Those who are asking for more government interference are asking ultimately for more compulsion and less freedom.

Liberty and freedom are terms employed for the description of the social conditions of the individual members of a market society in which the power of the indispensable hegemonic bond, the state, is curbed lest the operation of the market be endangered. In a totalitarian system there is nothing to which the attribute "free" could be attached but the unlimited arbitrariness of the dictator.

There would be no need to dwell upon this obvious fact if the champions of the abolition of liberty had not purposely brought about a semantic confusion. They realized that it was hopeless for them to fight openly and sincerely for restraint and servitude. The notions liberty and freedom had such prestige that no propaganda could shake their popularity. Since time immemorial in the realm of Western civilization liberty has been considered as the most precious good. What gave to the West its eminence was precisely its concern about liberty, a social ideal foreign to the oriental peo-

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ples. The social philosophy of the Occident is essentially a philosophy of freedom. The main content of the history of Europe and the communities founded by European emigrants and their descendants in other parts of the world was the struggle for liberty. "Rugged" individualism is the signature of our civilization. No open attack upon the freedom of the individual had any prospect of success.

New Definitions, Reversing the Meaning of Words

Thus the advocates of totalitarianism chose other tactics. They reversed the meaning of words. They call true or genuine liberty the condition of the individuals under a system in which they have no right other than to obey orders. They call themselves true *liberals* because they strive after such a social order. They call democracy the Russian methods of dictatorial government. They call the labor union methods of violence and coercion "industrial democracy." They call freedom of the press a state of affairs in which only the government is free to publish books and newspapers. They define liberty as the opportunity to do the "right" things, and, of course, they arrogate to themselves the determination of what is right and what is not. In their eyes government omnipotence means full liberty. To free the police power from all restraints is the true meaning of their struggle for freedom.

The market economy, say these self-styled liberals, grants liberty only to a parasitic class of exploiters, the bourgeoisie; that these scoundrels enjoy the freedom to enslave the masses; that the wage earner is not free; that he must toil for the sole benefit of his masters, the employers; that the capitalists appropriate to themselves what according to the inalienable rights of man should belong to the worker; that under socialism the worker will enjoy freedom and human dignity because he will no longer have to slave for a capitalist; that socialism means the emancipation of the common man, means freedom for all; that it means, moreover, riches for all.

These doctrines have been able to triumph because they did not encounter effective rational criticism. It is useless to stand upon an alleged "natural" right of individuals to own property if other people assert that the foremost "natural" right is that of income equality. Such disputes can never be settled. It is beside the point to criticize nonessential, attendant features of the socialist program. One does not refute socialism by attacking the socialists' stand on

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religion, marriage, birth control, and art.

A New Subterfuge

In spite of these serious shortcomings of the defenders of economic freedom it was impossible to fool all the people all the time about the essential features of socialism. The most fanatical planners were forced to admit that their projects involve the abolition of many freedoms people enjoy under capitalism and "plutodemocracy." Pressed hard, they resorted to a new subterfuge. The freedom to be abolished, they emphasize, is merely the spurious "economic" freedom of the capitalists that harms the common man; that outside the "economic sphere" freedom will not only be fully preserved, but considerably expanded. "Planning for Freedom" has lately become the most popular slogan of the champions of totalitarian government and the Russification of all nations.

The fallacy of this argument stems from the spurious distinction between two realms of human life and action, the "economic" sphere and the "noneconomic" sphere. Strictly speaking, people do not long for tangible goods as such, but for the services which these goods are fitted to render them. They want to attain the increment in well-being which these services are able to convey. It is a fact that people, in dealing on the market, are motivated not only by the desire to get food, shelter, and sexual enjoyment, but also by manifold "ideal" urges. Acting man is always concerned both with "material" and "ideal" things. He chooses between various alternatives, no matter whether they are to be classified as material or ideal. In the actual scales of value, material and ideal things are jumbled together.

Preserving the Market

Freedom, as people enjoyed it in the democratic countries of Western civilization in the years of the old liberalism's triumph, was not a product of constitutions, bills of rights, laws, and statutes. Those documents aimed only at safeguarding liberty and freedom, firmly established by the operation of the market economy, against encroachments on the part of officeholders. No government and no civil law can guarantee and bring about freedom otherwise than by supporting and defending the fundamental institutions of the market economy. Government means always coercion and compulsion and is by necessity the opposite of liberty. Government is a guarantor of liberty and is compatible with liberty only if its range is ade-

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quately restricted to the preservation of economic freedom. Where there is no market economy, the best intentioned provisions of constitutions and laws remain a dead letter.

Competition

The freedom of man under capitalism is an effect of competition. The worker does not depend on the good graces of an employer. If his employer discharges him, he finds another employer. The consumer is not at the mercy of the shopkeeper. He is free to patronize another shop if he likes. Nobody must kiss other people's hands or fear their disfavor. Interpersonal relations are businesslike. The exchange of goods and services is mutual; it is not a favor to sell or to buy, it is a transaction dictated by selfishness on either side.

It is true that in his capacity as a producer every man depends either directly, as does the entrepreneur, or indirectly, as does the hired worker, on the demands of the consumers. However, this dependence upon the supremacy of the consumers is not unlimited. If a man has a weighty reason for defying the sovereignty of the consumers, he can try it. There is in the range of the market a very substantial and effective right to resist oppression. Nobody is forced to go into the liquor industry or into a gun factory if his conscience objects. He may have to pay a price for his conviction; there are in this world no ends the attainment of which is gratuitous. But it is left to a man's own decision to choose between a material advantage and the call of what he believes to be his duty. In the market economy the individual alone is the supreme arbiter in matters of his satisfaction.

Consumers Choose

Capitalist society has no means of compelling a man to change his occupation or his place of work other than to reward those complying with the wants of the consumers by higher pay. It is precisely this kind of pressure which many people consider as unbearable and hope to see abolished under socialism. They are too dull to realize that the only alternative is to convey to the authorities full power to determine in what branch and at what place a man should work.

In his capacity as a consumer man is no less free. He alone decides what is more and what is less important for him. He chooses how to spend his money according to his own will.

The substitution of economic planning for the market economy removes all freedom and leaves to the individual merely the right to

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obey. The authority directing all economic matters controls all aspects of a man's life and activities. It is the only employer. All labor becomes compulsory labor because the employee must accept what the chief deigns to offer him. The economic tsar determines what and how much of each the consumer may consume. There is no sector of human life in which a decision is left to the individual's value judgments. The authority assigns a definite task to him, trains him for this job, and employs him at the place and in the manner it deems expedient.

As soon as the economic freedom which the market economy grants to its members is removed, all political liberties and bills of rights become humbug. Habeas corpus and trial by jury are a sham if, under the pretext of economic expediency, the authority has full power to relegate every citizen it dislikes to the arctic or to a desert and to assign him "hard labor" for life. Freedom of the press is a mere blind if the authority controls all printing offices and paper plants. And so are all the other rights of men.

A man has freedom as far as he shapes his life according to his own plans. A man whose fate is determined by the plans of a superior authority, in which the exclusive power to plan is vested, is not free in the sense in which the term "free" was used and understood by all people until the semantic revolution of our day brought about a confusion of tongues.

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Individual Liberty and the Rule of Law

RIDGWAY K. FOLEY, JR.

CONTEMPORARY Western society places high value upon two ideals: individual liberty[1] and the rule of law. Cursory examination of these concepts seemingly reveals the clear instance of inevitably warring propositions. The current milieu of high rebellion versus "law and order," of do-your-own-thing versus the sanctity of the traditional,[2] bringing into conflict personal action and public authority, does little to disabuse the notion. If law is defined as restraint on human action and liberty as the ab-

[1] I use the terms "liberty" and "freedom" interchangeably in this article. Berlin suggests that there have been over 200 recorded definitions of liberty, Isaiah Berlin, *Two Concepts of Liberty* (Oxford University Press, 1958) 6; I do not intend to catalog or examine all these definitions. Rather, this article is concerned with the search for a precise, valid definition of liberty, one which reveals and corrects the current deterioration of the concept. Berlin, *id* 16, does not believe such a deterioration is taking place, but see, contra, Lon L. Fuller, "Freedom – A Suggested Analysis" 68 *Harv. L. Rev.* 1305 (1955).

See for a different analysis, Glanville Williams, "The Concept of Legal Liberty," *Essays in Legal Philosophy* (University of California Press, 1968, Summers ed.), 121-145.

[2] What the existent generation presently sanctifies as traditional and sacred may not normally represent the great value judgments and normative concepts of the past. Today's nominal conservative may well mimic the radical of 30 years ago. Witness the acceptance, by all but the strict libertarian or voluntarist, of social security, union monopolies, and the Federal Reserve System.

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sence of restraint, the concepts are inimical and conciliation impossible. This article proposes briefly to scrutinize individual freedom and the rule of law, to determine if the working definitions are accurate, and to decide if overgeneralization has obscured the whole truth of partially valid tenets.

On the first blush, it may appear singular for a law review to consider the general quantity and quality of the law. Such considerations should have been long ago made and laid to rest. It is much more exciting to consider what the law can do to and for man, with or without his consent. Eradication of poverty, improvement of the environment, and assurance of economic equality for all men ring a more responsive chord in the breast of the sympathetic lawyer than cold, jurisprudential analysis.

The existence of past analysis does not mean that the present reiteration and refinement of essential ideas is unrewarding; we may need a gentle reminder of the past, and demonstration of its applicability to the dynamic present. It is the *use* of law for laudable goals at the possible expense of human freedom which commands re-examination. After all, most men agree that clean air, good housing, and a commodious job are desirable goals. The inquiry is not of goals, but of the means to secure the goals; the end pre-exists in the means.[3] If the rule of law can destroy human action, such a fact should be trumpeted to all concerned; before man surrenders his freedom for an end, he may want to know (1) if the suggested action will achieve the end sought and, if so, (2) if the end is worth the price.

Definitions of Liberty and Law

The first step toward understanding and analysis is the development of working definitions of the concepts to be studied.

(1) *Elements of liberty*

A meaningful concept of liberty presupposes a living, purposive, choosing human being.[4] An inanimate object may be described as being in a "free state" and yet it would be singular to characterize it as possessing liberty in the sense that a man is free. A man, however, imprisoned in Salem, cannot be in Paris or Rome or, indeed, in any place but his cell, so he is properly described as unfree or restrained.

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[3] Leonard Read amplifies and refines this truth orginally enunciated by Ralph Waldo Emerson. See, e.g., Leonard E. Read, *Let Freedom Reign* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1969), 78 *et seq.*

[4] See Fuller, *op. cit.*, at 1306-1307, for comments upon how the "scientific method" trend encourages thinkers to "play down" purpose.

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The prisoner example indicates a second prerequisite for liberty: the human actor must have a meaningful range of alternatives. The choice between remaining in prison or being shot while attempting to escape presents little real choice at all, but it remains a choice. It becomes viable if conditions in prison deteriorate to the progressively intolerable. However, freedom does not presuppose an infinite variety of choices.[5] One may live in London, or Paris, or Rome, but he cannot be present in all three places at the same instant, nor can he be on Saturn or Uranus (at this stage of space travel). Despite these limitations, an individual can be described as free. Man may be free despite his finity; one is not denuded of liberty merely because he cannot think like Albert Einstein, leap over buildings like Superman, or play basketball like Bill Russell.[6]

A third essential element of individual freedom is a relationship to at least one other human being. A person is meaningfully free only where his choice of alternatives is unrestricted by deliberate human interference, notwithstanding his subservience to physical or biological limitations. Robinson Crusoe, alone on his island, is neither free nor restrained. Only when he encounters natives on his rustic shore will the question of freedom arise, because only then is there possibility of deliberate human interference with individual actions.

Fourth, some element of internal and external restraint adheres in the very definition of liberty;[7] it is ineffective to equate liberty solely with the absence of restraint because such a definition could also apply to a state of lack of freedom. Robinson Crusoe could be subject to no deliberate human intervention when he subdued the inhabitants of his world and became absolute monarch, but he could not be styled free if he were subject to uncontrollable fits of passion or impulsive action which *he* could not restrain. Thus, the internal aspect of restraint, be it denoted self-control, morality, or con-

[5] See Berlin, *op. cit.*, 7, and Fuller, *id* 1309-1310. Careful analysis of this requirement destroys the naive "economic slavery" argument. But see Marshall Cohen, "Berlin and the Liberal Tradition," 10 Phil. Quar. 216, 225 (1960).

[6] Thus, the specious argument concerning maximization of human freedom by rendering all men "equal" is bared. Man can be free, meaningfully free, and not possess the identical natural attributes and choices of his fellows. Those who would fit all men in a Procrustean bed not only perform a disservice to those stretched and squashed, but also mock the meaning of freedom by using law in the name of freedom to perform restraining acrobatics.

[7] See J. Ebbinghaus, "The Law of Humanity and the Limits of State Power," 3 Phil. Quar. 14, 15 (1953).

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science, is implied in the very definition of liberty.[8]

Some thinkers have also recognized that unlimited power of human action without external restraint could result in license, anarchy, and civil chaos. In such a society, the "inferior" persons would have only the freedom of action permitted by their more powerful neighbors; the "superior" beings might virtually enslave their less fortunate fellows, but they, too, would be unfree to the extent that they were forced to devote their time to coercive, as opposed to creative, endeavors. To the extent that the predator must dissipate his creative powers in use of force upon others, he, too, is restrained, although his restraint is self-imposed and by his own choice.

Berlin's analysis separates liberty into "positive" and "negative" aspects; negative liberty is concerned with the inquiry, "In what area is man left free to do what he wishes without interference by other men, singly or in the collective?"[9] Implicit in this question concerning liberty is the premise that some restraint on human action exists compatibly with freedom. To the extent that this area of noninterference is contracted, the individual is coerced and unfree, but the very concept of an area of noninterference presupposes some limitation.

The external restraint implicit in liberty is a recognition of freedom of action as an equal right of all purposive beings in society.[10] The necessary implication is that liberty is not the total absence of restraint. The quest is for the permissible limits of restraint. In the words of Bastiat, liberty is "the freedom of every person to make full use of his faculties, so long as he does not harm other persons while doing so . . . [and] the restricting of the law only to its rational sphere of organizing the right of the individual to lawful self-defense. . . ."[11] Thus, the

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[8] See Edmund A. Opitz, "Defining Freedom," THE FREEMAN, Vol. 12, No. 9 (September 1962), 3, 5: "Rather than freedom being the mere absence of restraint we begin to see that freedom is indeed the acknowledgment of certain kinds of restraints — or constraints. Inwardly a man is free when he is self-determined and self-controlling. Outwardly, a man is free in society . . . when the limitations he accepts for his own actions are no greater than needed to meet the requirement that every other individual have like liberty."

[9] See generally, Berlin, *op. cit.*, 6.

[10] See Fuller, *op. cit.*, at 1322. Both Berlin, *id* 8, and Fuller, at 1310-1313, criticize Mill for believing all forms of social order were undesirable; I wonder if that is the correct interpretation. Fuller claims that some order is necessary to make choice meaningful, but *query*, the relevancy of his examples.

[11] Frederic Bastiat, *The Law* (Dean Russell Translation, The Foundation for

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workable ideal of liberty is a range of individual choice unhampered by deliberate human interference except insofar as intervention is necessary to assure equal liberty to all individuals.

Liberty has meaning because man possesses the power to choose, that is, the ability to observe, measure, test, evaluate, and select from alternatives.[12] But this does not mean that choice is meaningless unless liberty is also measured in terms of power to accomplish ends.[13] The freedom to do something does not imply success; it includes freedom to try and fail. Freedom to undertake a venture may well be of profound importance to the individual *sans* success in the ultimate endeavor. Hayek has wisely observed[14] that the concept of liberty cannot be restricted to areas where we know the result will be "good" because that is not necessarily freedom; freedom is required to attend to the unpredictable and unknown, and is desirable because the favorable results will far outstrip the unfavorable. The libertarian[15] is not utopian; he only asserts that liberty is the best condition for the realization of the multiple goals sought by purposive individuals. He would not impose his choice upon others; he merely asks that others not interfere with his voluntary choice.

Individual freedom is the lack of formal or informal external restraints imposed by one man or group of men upon another, save for the collective coercion aimed at preventing individuals from acting forcibly or fraudulently against their neighbors. It is the absence of human impediment to the voluntary action of fellow human beings. The permissible limitation on free choice is the recognition of

Economic Education, Inc., 1950), 51. See, also, p. 6. *The Law* also appears in Frederic Bastiat, *Selected Essays on Political Economy* (D. Van Nostrand Company, Inc., Princeton, New Jersey, 1964), 51-96.

12 W. E. Sprague, "What Is 'Freedom'?" THE FREEMAN, Vol. 12, No. 1 (January 1962), 38, 44; see also John C. Sparks, "Freedom to Decide," THE FREEMAN, Vol. 12, No. 10 (October 1962), 38. Berlin, *op. cit.*, 15, Note 1, indicates some of the many variables to be considered in measuring the amount of freedom a human being possesses in a given situation.

13 This would seem to be the suggestion in Oscar and Mary Handlin, *The Dimensions of Liberty* (Harv. U. Press, 1961), 11, 18.

14 F. A. Hayek, "A Case for Freedom" THE FREEMAN, Vol. 10, No. 10 (October 1960), 32, 34. See generally Professor Hayek's monumental work, *The Constitution of Liberty* (University of Chicago Press, 1960).

15 This term is utilized to avoid a confusion of labels fostered by the statist prostitution of the nineteenth century concept "liberal"; "Libertarian" or "Voluntarist" includes Mill (in his earlier years), Constant, De Tocqueville, Bastiat, the neoclassical economists, members of the Austrian free market school of economics, and persons in like tradition.

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an equal ambit of choice to all other men.

(2) *The elements of law*

I do not propose here to isolate and analyze the phenomena denoted "law." For the purposes of this article, it is sufficient to identify several classes of law, well accepted as such in the contemporary United States, and to limit our analysis accordingly. This in no way pretends that the proffered classification is exclusive.

In general, law is a method of control of human behavior, ordinarily accomplished by policies, rules, orders, decisions, and regulations, operative within a given territorial unit; its ultimate authority resides in the monopoly of coercion possessed by the state.[16] Coercion as an essential element of the legal system cannot be understated, even where compliance with law may be secured either by mere threat of force or by subtle forms of coercion.

The law is coercive insofar as it delimits the range of alternatives otherwise open to the individual actor, whether the results of noncompliance are penal sanctions in the traditional sense, or the foreclosing of legal processes for redress to the noncomplying individual. As indicated in the discussion of external restraints inherent in the definition of liberty, freedom not only presupposes a system of law but also could not survive in the absence of law.[17] However, an equally valid proposition is that liberty may be destroyed by the misuse of law.[18] Throughout the remainder of this article, by example and analysis, the interrelationship of law and liberty and the application of these two propositions will be explored.

Law and the Ambush of Liberty

Analysis of the relationship between law and liberty is complicated by the fact that laws which operate in society under the guise of liberty may, in fact, be inimical to the freedom ideal. All law actually premised upon such masquerading concepts may obstruct individual liberty, but the possibility of erosion of the concept is so likely that it is necessary to un-

[16] The ongoing jurisprudential analysis of the concept of law cannot be ignored or treated lightly. Although subject to criticism and disagreement, the work of H. L. A. Hart stands tall among his fellows; his influence must be acknowledged. See, generally, Hart, H. L. A., *The Concept of Law* (Oxford at the Clarendon Press, 1961), *passim*. See also Ronald M. Dworkin, "Is Law a System of Rules?" *Essays in Legal Philosophy* (University of California Press, 1968 [Summers ed.]), 25-60.

[17] See Fuller, *op. cit.*, 1314, Berlin, *op. cit.*, 5.

[18] Bastiat, Frederic, *The Law, op. cit.*, 11.

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mask some of the most common interlopers.

(1) *Strange bedfellows: Liberty, Equality, and Fraternity*

When liberty is properly defined as the absence of human interference with the actions of a purposive individual except to the extent required to assure like liberty to all other individuals in society, liberty and equality become singularly discordant companions. Liberty has long survived the graveyard of dogma because the libertarian accepts man as he finds him, an extraordinarily complex, volitional being, capable of creation or destruction, searching for multiple goals;[19] equality is curiously incompatible with both liberty and the nature of man, because the egalitarian refuses to accept man as he finds him. The egalitarian all too often bottoms his view on the premise that mankind is essentially brutish and incompetent, incapable of betterment and undeserving of salvation, although the same thinker may posit that man acting in the collective somehow achieves great creative powers.[20] Liberty is both a desirable and achievable goal; equality is neither, unless equality means "equality before the law," equal treatment of saint and sinner found in the same posture or circumstance.

This confusion of concepts is partially caused by the association of the word "equality" with the American and French revolutions of the eighteenth century, tradi-

[19] See Wendell J. Brown, "What Liberty Is," 47 ABA J 290, 291 (1961).

[20] Witness the modern egalitarian liberal. He gives lip service to the concept that all men are created (or must be made) equal, yet he distrusts man and his capacity to choose; he would foreclose choice or impose his choice upon other men. His goal seems to be to seize control of governmental apparatus and choose for an unwilling multitude that which they "need" or "should choose," apparently if they understood the problem as well as the egalitarian liberal thinks he does. (Yet these same demented members of the mass apparently have enough native intelligence to elect our liberals to office.) Apparently it is right to help your fellow man; apparently also, to the liberal, free individuals do not assist their unfortunate brothers; therefore, the liberal takes charge and makes the choice (who and how much to help) and a swelling welfare system is nurtured and sanctioned by law.

Again, the liberal cannot accept the possibility that free individuals could carry the mail safely, quickly, and more efficiently than a public service, and thus a governmental mail system lives on at an amazing cost and grinding inefficiency.

For examples of "governmental" functions which could and have been performed more adequately by private individuals, see the interesting little book recently published, William C. Wooldridge, *Uncle Sam, The Monopoly Man* (Arlington House, New Rochelle, New York, 1970). For two views of the American liberal in his element, see M. Stanton Evans, *The Liberal Establishment* (The Devin-Adair Company, New York, 1965) and William F. Buckley, Jr., *Up From Liberalism* (Hillman Periodicals, Inc., New York, 1961).

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tionally associated with the search for freedom. A literal application of the egalitarian concept may be utilized to level society by fitting men of varying potentialities to a Procrustean bed measured to the least fit. Those possessed of the least measurable potential might be made happier by this process, but the result would not be freedom. Equality is consonant with liberty only in a limited sense; the equality comprehended by the Declaration of Independence and the libertarian tradition was equality of birth, without vested privileges provided by the state, and equality before the law, an equal liberty to utilize one's faculties and potential to his own ends, to succeed or fail, to determine his own destiny without special favor of discrimination.[21]

Fraternity possesses a subtler but very real possibility of shrouding liberty. Berlin has clearly indicated that the cries of oppressed classes and nationalities for "liberty" often obscures their real desire, that of recognition by other men of one's own human worth.[22] This search for status may lead to the worst kind of demagoguery and oppression, since the individual sacrifices his liberty for the realization of group status, and in return receives recognition by the group. It is not the motive to be recognized by one's fellow man which is wrong, for this is a very real human desire. Rather, it is the sacrifice of voluntary action in the name of liberty which results in illiberal acts committed in the name of liberty which is wrong; the submission of the individual to the group renders him less human by his escape from moral responsibility for his acts, placing responsibility and choice in the hands of the will of the group, which normally means the will of the loudest or the most violent. The fallacy lies in the fact that fraternity consonant with true liberty cannot be enforced – it must be voluntary.[23]

(2) *Liberty and self-government: Berlin's positive liberty*

Another concept masquerading as liberty is the natural desire to be self-governing, or "democracy." Berlin has analyzed the problem of liberty as confusing the question of "to what extent shall I be free in my actions from the deliberate intervention of others?" with the inquiry, "To the extent that I am to be coerced by others, who should coerce me?"[24] Cohen has taken issue with this analysis,

[21] An excellent article dealing with the true nature of equality is to be found in R. Carter Pittman, "Equality Versus Liberty: The Eternal Conflict," 46 ABA J. 873 (1960).

[22] Berlin, *op. cit.*, 39-47.

[23] Bastiat, *op. cit.*, 25.

[24] Berlin, *op. cit.*, 6-19 generally.

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terming it "academic, inflated and obscure."[25] He argues that Berlin confuses the positive-negative liberty distinction with a distinction between individual liberty and public authority, and that the traditional libertarian thought was identified not only with a search for "negative" liberty, but also with the development of self-government.[26]

Despite these criticisms, there is a distinction between the form of the state and the area of noninterference.[27] Democracy can be as subvertive of liberty as autocracy; 51 per cent of the electorate could vote to plunder and pillage the remaining 49 per cent; a progressive income tax obviously limits the freedom of those in the higher brackets for the alleged benefit of the majority who reside in the lower brackets. On the other hand, it is possible to hypothesize an absolute monarch who governs solely within a strictly limited sphere of state action, preventing fraud and violence, and providing for the settlement of private disputes.

Once this basic distinction is recognized, Cohen's criticism is rendered less vital. To acknowledge the distinction between liberty and self-government, and to admit the possibility of perversion of democracy into mob rule of might-makes-right, is entirely distinct from contending that self-government is undesirable or less favorable than another governmental system. Certainly libertarian tradition has consistently concluded that self-government not only fulfills the basic human desire to be master of oneself, but also provides the most likely form by which to secure the condition of liberty.

But, Berlin asserts a salient proposition that the desire to be master of one's own self can degenerate into the worst kind of totalitarianism.[28] The demented

[25] Cohen, *op. cit.*, 216.

[26] Cohen, *id* generally, especially 217. Of course these are not the only arguments advanced against Berlin's thesis in this well-written article. For example, at page 222, Cohen claims that economic tyranny parades as a negative liberty concept, and that people have a drive to be "free" from this oppression; it is obvious that Cohen has fallen into the economic slavery fallacy here.

[27] Of course, there is nothing new in what Berlin says; Bastiat, writing in 1848, stated, *op. cit.*, 16:

"In fact, if laws are restricted to protecting all persons, all liberties, and all properties; and if law were nothing more than the organized combination of the individual's right to self-defense; if law were the obstacle, the check, the punisher of all oppression and plunder—is it likely that the citizens would then argue much about the extent of the franchise?"

See also Berlin's contentions, *op. cit.*, on the confusion between liberty and sovereignty, pp. 47-52.

[28] *Id* 16-19, 25-29. Again Bastiat was over a century ahead of Berlin on recognizing the dangers presented by Rous-

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idealist glorification of the state influenced two vicious forms of state barbarianism in this century, national socialism and communism. Yet this very idealism commenced with the premise of a natural desire to master one's own destiny; it was perverted when it became hopelessly confused with the belief that the ends of each man, rationally measured, would always coincide with those of every other man. Therefore, the general will represented the "rational choice" of each member of society, although a given individual member might be blind to his "real self" and therefore his choice would have to be made for him by a master more rational than he.[29]

This is, of course, the same tired argument of all tyrants, that the state must do for man what he cannot do for himself. Since the state is a coercive, not a creative, force, there is nothing it can do, except use force, that man, singly or in voluntary association, cannot do for himself. It may, however, do things a volitional individual *would not* do;[30] this reveals another evil, since an individual recognizes less responsibility for the consequences of a choice where his personal choice is one step removed from the effecting cause.

On a somewhat lesser, but no less pernicious, plane, the Fabianism sweeping the West[31] today proceeds upon the same illogic, idolizing the expert and the planner who know better than the citizenry what the latter "wants" done in a given situation. The libertarian recognizes the vital truth that not only are the ends of man in potential conflict[32] but also that individual voluntary action is the only method by which one's destiny can be completely and morally determined, even if the determination so chosen might appear "irrational" to an observer.[33] To be free is to be allowed to make one's own mistakes.

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seau's philosophy; compare Berlin, *ibid.* 48-49, with Bastiat, *op. cit.* 44-46; see also Pittman, *op. cit.*, generally.

[29] Berlin, *id* 29-39, especially p. 39, showing how liberty and authority tend to become identical.

[30] For example, under the specious argument that "men cannot do this for themselves" the state may coercively deprive individuals of their property (taxes) and enter into an uneconomic project — it is likely that this is the rational analysis of federal space exploration. See how private action can solve, and has solved, many problems which are posited as "necessary state action" in Wooldridge, *op. cit.*, 20.

[31] Exemplified, for instance, in the works of John Kenneth Galbraith.

[32] See Berlin, *op. cit.*, especially 52-57.

[33] Note, I do not say "disinterested" observer. Quite often we neglect analysis of the interest of those persons who want to do something "for" us, those who pose as unbiased and disinterested experts. Their real interest is often anathema to the cause of voluntarism.

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(3) *Liberty and security*

Security, occasionally mislabeled "liberty," is a common end sought by man. Security might be said to be the barter of freedom in order to satisfy a desire to avoid choice, agreeing to acquiesce in the choice of another. Although liberty inherently posits individual choice for oneself, it does not prevent the choice for "security" in all instances. Security is inimicable to liberty where one not only chooses not to choose, but his choice, ordinarily in the collective with other similarly situated, operates by some sanction to force that choice upon another unwilling individual.[34] Man commonly desires to plan for his retirement or old age; it is not a perversion of liberty to choose to enter a voluntary arrangement whereby a private insurer plans a retirement program for consideration. However, where 51 per cent of the voters choose a state-enforced program binding all present and future citizens, it is clear that the quest for security has resulted in a deprivation to the liberty of the unwilling who wish no program at all, or, more likely, wish to plan for the future in accordance with their unique situation.

An amazing example of confusion of terms in high places is the illogical shift in the infamous "four freedoms" speech.[35] Coupled with the two accepted adjunct freedoms, expression and religion, are two interlopers, freedom from want and freedom from fear. More amazing still is the fact that these false freedoms have wormed their way into accepted political programs without criticism, accepted as respectable as though they could be achieved in fact. "Freedom from want and fear" may represent basic human desires but to call them freedom is foolish.[36]

(4) *Enforced orthodoxy*

Again, liberty may be confused with a system of enforced ortho-

[34] Mr. Sollitt concisely describes the situation: "We invented a fascinating new parlor game in which we all stand in a circle, each with his hand in the next person's pocket, all seeking to get richer thereby." Kenneth W. Sollitt, "Four Foundations of Freedom," VIII *Essays on Liberty*, 176, 181 (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1961).

[35] See Frederick A. Manchester, "The Tricky Four Freedoms," VII *Essays on Liberty* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1960), 272.

[36] Unless man earnestly desires the bottled-baby routine of a brave new world, I seriously question whether "freedom from fear and freedom from want" are possible. "Fear" is a singularly internal matter which cannot be cured by state-sanctioned bread and circuses; and, as I studied economics, that whole endeavor was based upon the major premise that man's wants are insatiable and that the supply of goods is limited, so it would seem that "want" cannot be satisfied by autocratic or bureaucratic fiat.

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doxy, sometimes signified the "consensus" fallacy, which provides for such a limited range of choice that the individual is not really free at all. Sunday laws are a common example of this concept, where religious freedom means freedom to be religious in the manner recognized by the community. Compulsory franchise laws, existent in both Eastern and Western nations, provide another example where a citizen must vote, although he may have a real, not a perfunctory, choice between candidates who may represent diverse positions. Freedom must include freedom to abstain or it cannot be freedom; to claim that the Soviet hegemony has free elections is a mockery. The most obvious example appears in the enforced othodoxy of conscription, now under some semblance of attack in the halls of Congress.[37] The concept of a conscript fighting for freedom could be humorous if the milieu were not so deadly serious. The cause of freedom has suffered much in making the world safe for democracy.

[37] While the "conservative" libertarian has long recognized the diminution of freedom inherent in the Universal Military Training Act (see Candidate Goldwater's recommendations for an all-volunteer army in the 1964 presidential campaign), it is only recently that the idea has found favor with the liberal politicians and media. Now that the concept is popular, many rush for a seat on the bandwagon.

(5) *The question is: Freedom for whom?*

Liberty achieves its true station when it is equally applicable to each individual in society;[38] this is implicit in the definition of liberty as the absence of human interference with individual actions except as is necessary to insure equal freedom for all. Yet, an "unequal liberty" may parade under the mask of liberty; this interloper may partake of some attributes of liberty, but only for a limited group of persons. For example, a slave society might be found where the ideal of liberty existed for the ruling class alone; to the extent of slavery enforced by coercion, that society is restrained, not free. In fact, the ruling class is itself less free, albeit by deliberate choice, in two senses: (a) it must allocate part of its resources to the continuation of slavery, instead of releasing these forces for creative endeavor, and (b) to the extent that the enslaved class does not operate to its creative potential because of the oppression, the rulers suffer the loss of that potential outflowing of productivity.

When examining a restrictive norm allegedly enacted or adduced to advance freedom, a relevant in-

[38] But what of the defective, aged, and insane who must be incarcerated "for their own good"?

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quiry is "freedom for whom?" If the law extends privileges to one group at the expense of others, and is not founded upon the legitimate state function of preventing fraud and violence and providing for the adjudication of private disputes, then it does not achieve liberty.[39]

In our legitimate concern over the mistreatment of colored persons for two centuries, we now fail to see that the liberty of the employer is restricted when he is forced to hire a Negro applicant against his will, and the liberty of a storekeeper is limited when he is forced to serve those he does not wish to serve at his lunch counter. An entirely different inquiry is presented when white persons, singly or collectively, with or without authority of law, coerce colored persons and prevent them from voting, breach the doors of their church and harrass their peaceful meeting, or fail to provide an equal administration of justice for persons of all races by excluding qualified Negroes from the venire.

(6) *The divisibility fallacy*

Statist philosophy often obscures the essential fact that liberty is indivisible. Failure to educe this element tends to lead the less sophisticated apologist for unwarranted state intervention to justify governmental extension on the grounds that "human rights take precedence over property rights." So stated, the proposition is clearly unsound and a negation, because of the identity of subject and object. "Property" possesses no rights, any more than air, or dogs, or cinnamon possess rights; rights inhere only in individual, volitional beings. Property rights *are* human rights.[40] Thus, the contention really means that the liberty of some persons must be curtailed and in some mystical way the liberty of other persons will be expanded.

What those propounding this argument truly mean is that certain aspects of liberty should be restricted while others remain unmolested (for the time being), but emotive words are utilized to secrete the true justification. Thus, while the United States currently witnesses a growing recognition and sanction of the constitutionally specified freedoms of speech, press, association, and religion, an

[39] It would seem that some of the problems presented may be reduced to the question of advisability of prior restraint, that is, whether a restrictive law ought not to be enacted because if that law is not passed there is a possibility of abuse of freedom. I think Hayek's argument, *op. cit.*, would sufficiently answer this contention.

[40] See William Tolisches, "Private Property and Freedom," THE FREEMAN, Vol. 11, No. 2 (February 1961), 46.

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over-all diminution of liberty occurs.[41]

The clearest present deprivation of liberty is to be found in the market place where state intervention has whittled down the individual's choice of alternatives. Because of the artificial human-rights-property-rights distinction, there has been acceptance of the tenet that freedoms of association, speech, press, and religion can somehow survive without economic freedom. This is preposterous: as the market becomes more controlled, these adjunct freedoms lose strength. Freedom of the press means little where the state controls the supply of newsprint; freedom of speech and association are fine unless the state owns all the available meeting places; freedom of religion can be destroyed if land and building materials for the construction of structures of worship belong to the state, since the state affixes conditions of use to that which it owns or controls. The rights of freedom of speech, press, association, and religion are all dependent upon economic freedom because, to be effective, they must utilize the product of the market, and where the state controls production and distribution, it controls ultimate use. Market control is not price control or rent control – it is *people* control.[42]

Liberty: Encouraged or Destroyed by Law

To ascertain the relationship between liberty and the various functions which law performs as a device for securing social order, it is desirable to separate several obvious types of laws and examine their peculiar relationship to liberty, noting how each class of law can either encourage or destroy individual freedom.[43]

(1) *Criminal duty-imposing rules*

Criminal law provides for the redress of harm done to individuals when the harm is such that its existence threatens the very structure of society and all per-

[41] Dean Russell, "Freedom Follows the Free Market." X *Essays on Liberty* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1963), 198, 200-201.

[42] See, generally, Russell, *id*, and also his article, "Basis of Liberty," THE FREEMAN, Vol. 12, No. 7 (July 1962), 9. See also, Sparks, *op. cit*, 44. There is a current argument advanced that desirable characteristics can blossom in a severely restricted society which restrains individual liberty; this contention is supposed to obviate the contention that liberty is necessary for the morality and productivity of man. It seems clear, however, that creation in the restrictive society is not caused by state intervention but *in spite* of it.

[43] Bastiat, *op. cit.*, 8-9, attributed the destruction of liberty to greed or to false philanthropy.

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sons situate therein. Criminal laws are absolutely necessary to the existence of liberty because their function is to protect the individual, by deterrence and penalty, from infringements on individual liberty by those who would trespass upon the equal freedoms of others. If nothing else is achieved by the state, it should at least isolate those who would forcibly and fraudulently deprive their neighbors of life, liberty, or property. It is difficult to imagine a system where liberty could flourish without institutions to prevent individual or collective force and fraud against one's neighbors. Criminal laws restrict liberty to the extent that they inhibit the individual from his free choice. Thus, this limitation of liberty is necessary and desirable for liberty to survive.

It may seem curious to assert that criminal law, customarily so devoted to the equal protection of individual life, liberty, and property from the transgressions of others, could be perverted into a destroyer of freedom. However, a legal system which fostered plunder of property by making individual resistance thereto unlawful certainly would restrict liberty. Freedom is unduly inhibited where the criminal laws utilize and sanction that which is proper human action, not interfering with the equal liberty of all, such as Sunday laws, usury laws, consensual crimes between adults not in the public view, and minimum wage laws.[44]

(2) *Civil duty-imposing laws*

The law performs another essential function by providing institutions for civil recovery of individual restraints on human action, commonly denoted the "administration of justice." Conduct restricted may or may not also be criminal. For example, P's freedom is obstructed when D negligently strikes him with an automobile, to the extent that P's life may be shortened, his freedom of movement hampered by a broken leg, or his property taken for the payment of medical bills. Therefore, D's freedom of action is justly restricted to the limit of

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[44] Ayn Rand's epic, *Atlas Shrugged* (Random House, New York, 1957), graphically described a system where the criminal laws were perverted to destroy liberty.

Usury laws may be civil or criminal; in either milieu, they are untenable restrictions on voluntary action. Why should I be limited by the state in the amount I can charge for the use of my money? It is my property, after all; if the borrower doesn't want to pay the price, he can (1) go elsewhere, or (2) refuse to borrow. He need not deal with me. The recent economic upheaval in the United States has aptly demonstrated the superciliousness of usury laws. The recent *prime rate* high point exceeded the allowable maximum rate of interest in some jurisdictions.

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taking some of his property at P's instance to compensate P for his loss; D's freedom of action is restricted but only by the consequences of his volitional act. There is no proper penalty for negligence; a restriction of liberty is valid only where D is at fault and that fault causes the deprivation of another's freedom.[45] If, however, D intentionally struck P, he might be both civilly and criminally liable; not only would D restrict P's freedom of choice and action but also he would constitute a danger to society as a whole.

Civil-duty laws destroy liberty where liability is imposed upon D without any fault, or without any causal connection between his actions and P's injuries. Thus, laws providing for status or absolute liability,[46] justified only on the basis of the "deep-pocket" doctrine, or the theory of "enterprise liability," represent legally sanctioned deprivations of liberty, as does the trend toward state-enforced insurance and compensation schemes. Where an individual is mulcted for results not of his making, where he is not "at fault," his liberty is unfairly restricted and the society falls short of the ideal of freedom. Where the individual is made to pay for the consequences of acts volitionally done (his fault), the lessening of liberty is justified.

(3) *Laws channeling or conferring powers*

Rules providing procedures by which the individual can achieve the results of his voluntary and consensual associations with other persons may augment the ideal of liberty. Law in the early United States, by the development of many of these rules, fostered the nineteenth century outburst of creative energy.[47] Even a frontier society required a law providing for the recordation of land titles,[48] and norms for enforcing individual agreements voluntarily reached, as well as rules for the adjudication of private disputes.

Power-conferring rules restrict liberty when they deny enforcement procedures for individual ac-

[45] See, concerning the doctrine of fault in tort law, Foley, Ridgway K., Jr., "The Doctrine of Fault; The Foundation of Ex Delicto Jurisprudence," 36 *Ins. Counsel J.* 338-346 (1969).

[46] See, concerning the development of the absolute liability of seaworthiness in maritime law, Foley, Ridgway K., Jr., "A Survey of the Maritime Doctrine of Seaworthiness," 46 *Or. L. Rev.*, 369-421 (1967).

[47] See, Handlin, *op. cit.*, c. IV; see, also, an excellent little book, James Willard Hurst, *Law and the Conditions of Freedom in the 19th Century United States* (U. of Wis. Press, 1956).

[48] But query, could not this be achieved privately, without state intervention except to sanction the agreements and decide disputes?

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tion not following prescribed procedures; they do not prevent voluntary individual resolution of problems by other means if enforcement is not required. There is no prohibition of a sale of Blackacre by oral agreement between B and S, if both parties carry out their bargain – it is only when one party reneges that the statute of frauds prevents enforcement. Again, the law-conferring powers will not penalize B for failure to record title to Blackacre, and if no other claimants appear, B's title is secure. The power-conferring rules destroy liberty only when they are used to restrict human endeavor, to allocate market resources, or to promote favoritism.

Curiously, many writers have considered the nineteenth century United States as a *laissez-faire* economy where freedom was given free rein, and the government performed only the functions of a night watchman. Proceeding from this naive premise, they draw the equally absurd conclusion that law must positively restrict individual freedom in order to prevent real or imagined evils flowing from the "libertarian experiment."[49]

First, nineteenth century America clearly enjoyed less restriction on human action than any earlier society in history; however, the claim that the limitations were only those of a policeman preventing *malum in se* crimes ignores historical fact. Writing at mid-century, Bastiat indicated two particular areas of restraint, slavery and protective tariffs.[50] To these can be added, by way of nonexhaustive example, the internal improvement schemes of Henry Clay; the fostering of public education; the grant of monopoly power to private groups in the "public interest"; national control of finance; licensing and regulation of navigation and improvement of harbors; and direct or indirect encouragement of transportation; not to mention state tinkering with money, coinage, and banking in relation to the finance powers.[51] Moreover, the argument falsely focuses only upon the Federal government, which, admittedly, was more concerned with the problems of federalism prior to the Civil War. One cannot overlook state and local restrictive activities, including commercial regulation, licensing, subsidies, and monopoly grants under an ex-

[49] This seems to be a common argument justifying the modern welfare state.

[50] Bastiat, *op. cit.*, 19.

[51] For a discussion of many areas of governmental action in the nineteenth century, see Hurst, *op. cit.*, generally, and especially 6-9, 41, and 51-53. See also, Handlin, *op. cit.*, generally.

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panding concept of the police power.[52]

Second, the "Golden Age"[53] argument assumes that individual liberty was responsible for "abuses" of the nineteenth century, proceeding from the untenable tacit assumption that liberty was meant to be a panacea leading to utopia. The libertarian contention is only that voluntarism is the best system for a fallible but improvable mankind. Likewise, the conclusion that liberty caused abuse is untenable; empirically, most "abuses" were conditioned by law, not liberty, and flow from failure to properly provide sanctions against trespass on liberties or unwarranted interdiction of human freedom, directly or by delegation to private groups.

Third, the argument overlooks the positive function performed by the law in the nineteenth century; for example, the Federal judiciary under the Interstate Commerce Clause prevented the erection of internal barriers to free trade by mercantilist states at the behest of favored local businesses, and the states followed a liberal policy of granting charters to associations and providing a remedy for failure of subscribers to a capital pooling venture to carry ou their voluntarily entered bargains.[54]

(4) *Adjudicative laws*

The development of individual freedom requires a body of law relating to the administration and settlement of private disputes. Without adjudicative rules, there would be great difficulty in effecting the rules imposing civil or criminal duties, or conferring powers, since there would be no

[52] It is too often forgotten that state governments in the United States generally possess a residuum of power and their Constitutions merely carve out a minimum area of noninterference, while the Federal Constitution, in theory, strictly limits the exercise of national power by the concept of delegated powers. It is submitted that a residuum of power ought to vest in the *individual*, not in the state or local government, in order to secure the ideal of freedom. To fail to see this is to fall into the traditionalist trap of Henry George and Albert Jay Nock, who apparently believed that if the government were close to the people it would not likely abuse its powers; not only does this confuse Berlin's positive and negative liberty, but also it betrays a lack of perception of the real world.

[53] Berlin, among others, has treated individual liberty as a recent development, primarily limited to the North American Continent and Northern Europe, beginning with the late eighteenth century. Yet, certain salient aspects of individual liberty are present in some ancient cultures in the East, and certainly it is unwise to overlook the Sarcenic development; see Henry Grady Weaver, *The Mainspring of Human Progress* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1953).

[54] See Hurst, *op. cit.*, and Handlin, *op. cit.*, generally.

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organized institution of enforcement. Common examples of ajudicative rules are regulations relating to the qualifications, selection, and tenure of a judge, conciliation commmission or arbitrator, rules of evidence and procedure for guiding the presentation of the dispute and enforcing the official determination.[55]

Adjudicative rules restrict individual liberty by narrowing the choice of alternatives in the choice of court, judge, procedure, and evidence, and excluding the choice of self-help, but they are justified on the ground of making choice meaningful. Absent the central administration of justice, civil chaos would reign. However, the ideal of liberty is perverted when adjudicative rules are used to discriminate against some persons seeking legal redress or where the law is used to unduly restrict liberty. For example, where colored people are customarily excluded from the venire, liberty is imperiled. Likewise, where the legal system no longer requires proof of fault or causation for civil recovery, but only that the defendant possess a deeper pocket, and upon such proof authorizes and enforces recovery, the law is misused and reduces the defendant's freedom.

(5) *Laws for making laws*

Closely related to adjudicative rules are the law-making laws; adjudicative rules make law in the sense of the law of the case and in the sense of precedent; law-making laws provide procedures and qualifications for the passage of general laws, limitations on law-making powers, and grants of law-making powers. Common examples of law-making laws are those setting forth qualifications and tenure of public officials; local initiative, referendum and recall; home rule; rules of procedure within legislative, executive, or administrative bodies; rules of court; and the procedural apparatus for publicizing laws.

Law-making laws also include rules against potential laws and the abuse of law-making power by providing a line beyond which there is no law-making power extant. For example, constitutional prohibitions against taking property for public use without just compensation, impairing the obligation of contracts, and the whole gamut of provisions in the Bill of Rights contain absolute restrictions to protect the indi-

[55] *Id,* generally. The "law-less" nineteenth century certainly produced some marked improvement in this category of law, for example, the Field Code, which attempted to limit the common-law technicalities and assure that all persons could quickly bring their disputes before an official tribunal.

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vidual from collective interference.

Additional norms within the category of law-making laws are rules prescribing the proper functions of the state; here the greatest destruction of individual freedom has occurred. Where restrictions against state interference with individual liberty are perverted by legislative fiat or judicial interpretation, so as to permit the state to become a producer in the market, as occurred in the development of the Tennessee Valley Authority or Social Security Programs, individual liberty suffers as a consequence.[56]

The Value of Liberty and the Role of Law

To this point I have proceeded upon the major premise that a maximum ideal of individual liberty is desirable and the proper role of the law is to foster and protect that ideal. Some reasons for this premise follow:

(1) Only under conditions of individual liberty can man be a truly responsible moral agent.[57] Choice presupposes responsibility and fosters it; if a man is unable to choose because of restraint he is, to that extent, dehumanized. The choice not to choose at all but to pass that choice to a nonresponsible collective is a choice *per se* and the burden for the consequences of the allocation by the collective must rest, in last analysis, upon the ultimate choice-maker, the individual who refused or refrained from choosing. (2) Only with the conditions of maximum liberty can man's creative nature have full sway in the solution of his problems; liberty is a singular concept, having no fixed ends in itself, and presupposing that ends are open and only the individual can best choose for himself.[58] (3) With maximum lib-

[56] To belabor the obvious, when one is compelled to participate in a bankrupt state insurance scheme, his freedom is lessened; he loses property to the state and he effectively loses his choice to plan his own future.

Again, when the state co-opts the power-producing and distribution system in an area, the individual no longer has a choice of suppliers if he wishes to use electricity, nor does he have the opportunity of entering the business in competition with the state. And, he must pay over part of his property, through taxation, to support the system and pay through subsidy for the current used by his neighbors.

Of course, the examples suggested are but two of many intrusions into the market by an expanding state.

[57] See, Sollitt, *op. cit.*; Clarence B. Carson, "Individual Liberty in the Crucible of History: 6. A Rebirth of Liberty," THE FREEMAN, Vol. 12, No. 10 (October 1962), 3; Sprague, *op. cit.*; Dean Russell. "What Freedom Means," THE FREEMAN, Vol. 11, No. 12 (December 1961), 18.

[58] See Sylvester Petro, "Freedom and the Nature of Man," THE FREEMAN, Vol. 11, No. 9 (September 1961), 9; Brown, *op. cit.*; Hayek, *op. cit.*; Russell, "Basis of Liberty," *op. cit.* See also, Hurst, *op.*

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erty and the concurrent release of individual creative power, man will produce the greatest abundance of material, as well as spiritual, wealth possible. [59]

In summary, then, what is individual freedom and what is the proper function of law? Liberty is the absence of human intervention with the endeavors of an individual to utilize his life, liberty, and property (and all adjunct rights flowing therefrom) as he sees fit and for the ends he desires, limited only by the equal liberty of all other individuals in society. To accomplish this ideal of liberty, law must be restricted to its proper role; prevention of use of force and fraud against any individual or group by any individual or group[60] or by the state, except where necessary to prevent the actor from invading the equal freedom of another; provision of processes and institutions for adjudication and enforced settlement of private disputes; and, provision of reasonable channeling procedures through which private individuals may utilize their voluntarily chosen ends.

cit., 5-6 where he recognizes this as a major premise of the nineteenth century political thought. For further elucidation, see generally, Leonard E. Read, *The Coming Aristocracy* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1969); Leonard E. Read, *Talking to Myself* (The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York, 1970).

No man is able to understand the variables and influences present in the decision-making milieu facing any other human being; only the actor is capable of a reasoned choice. This is not to say that it will always be the "best" or the "right" choice when viewed by a third-party observer. It is to say, however, that it is the best and right choice for the actor, certainly superior to the judgment of any other man or collective at that time. And even if the choice were not the best, it would still be desirable to allow the actor to chose, because (1) it is his destiny at stake, and (2) no group or collective is better positioned to make the choice. As Nock wrote: "The practical reason for freedom, then, is that freedom seems to be the only condition under which any kind of substantial moral fibre can be developed," *Cogitations from Albert Jay Nock* (The Nockian Society, Irvington-on-Hudson, New York, 1970, Thorton ed.) 63.

[59] *Id*, Note 57.

[60] Spatial limitations prohibit an examination of the relation between law, liberty, and the association. As Fuller points out, *op. cit.* 1316-1322, the problems of freedom occur in all multiple human relationships. There is a trend away from considering the problem of freedom in "Man v. State" terms, and in considering the relationship the group or the association bears to the situation. For some varying viewpoints on this situation, see Fuller, *op. cit.* 1316 ff.; Clarence B. Carson, "Individual Liberty in the Crucible of History: 3. Circumstances Hostile to Liberty," THE FREEMAN, Vol. 12, No. 7 (July, 1962), 11; Handlin, *op. cit.*, c V and VI; Cohen, *op. cit.*, particularly 221-225. See also, Louis B. Schwartz, "Institutional Size and Individual Liberty: Authoritarian Aspects of Bigness," 55 NW. L. Rev. 4 (1960); and

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Bayless Manning, "Corporate Power and Individual Freedom: Some General Analysis and Particular Reservations," 55 NW. L. Rev. 38 (1960).

Unfortunately, too many analysts are not adept at careful study in this area and fail to comprehend important distinctions. For example, Fuller seems to say that the solution is to provide individual freedom within the association and associational freedom within the society, and Schwartz seems to lump all forms of organization into a single pot; but what these and similar thinkers overlook is the concept of *voluntarism.* There is a distinction of magnitude between associating by mutual consent and choosing to submit to agreed terms and consequences, and an association which is compelled by the sanction of loss of an essential choice. Thus, much of the bigness in society has been fostered by unwarranted and unwise governmental interference into the affairs of man; the government-inspired monopoly (railroads, utility) becomes large and powerful much more so than if these associations lacked state backing and favor; to combat this growth, the state itself looms larger. No libertarian objects to voluntary association in any group, union, church, club, or society, so long as both the membership and the individual members have rights to voluntary withdrawal and so long as society is not a criminal conspirator, such as the Mafia or the Ku-Klux-Klan, bent on doing violence to the rights and properties of others; what we do object to is government favoritism and intervention and *involuntary* association; a common example of lack of associational freedom is the forcing of one to become a member of a labor union. A person can hardly contend that the Oregon lawyer is free when he is compelled to belong to, and support, the integrated Oregon State Bar, particularly when that association takes moral and political stands with which the dissenting members disagree. See the interesting struggle posed, and the questionable solution in *Lathrop* v. *Donahue,* 367 U.S. 820 (1961).

IDEAS ON LIBERTY

The Rule of Law

THE END of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law; and is not, as we are told, a liberty for every man to do what he lists (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.

JOHN LOCKE, *Second Treatise*

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THE RED DECADE

THERE ARE affinities between the nineteen thirties and the nineteen sixties. There are also some significant differences. Nobody has, as yet, done a searching comparative essay on the two benighted epochs, but in default of the omission the republication of Eugene Lyon's study of the thirties, *The Red Decade* (Arlington House, $8.95), after being out of print for thirty years, offers the best possible perch from which to view the disastrous period that is just behind us.

The parallelism between the two decades is apt. In the thirties we had terrible domestic troubles and the growth of an isolationist spirit. But the rise of European Fascism and the ferociously militant expansion of Japan broke in upon our home-grown concerns. We were induced, partly by fear and partly by feckless diplomacy that set the stage for Pearl Harbor, to substitute Dr. Win-the-War (Franklin Delano Roosevelt's characterization) for Dr. New Deal.

During the whole period, as Gene Lyons points out, our cultural life was subjected to the Machiavellian penetrations of a foreign power that used a bewildering variety of "Innocents Clubs" and "transmission belts" and other "fronts" to lead artists, journalists, scientists, teachers, labor leaders, and important political figures around by the nose. We ended up in a war for "democracy" that enabled the malevolent Josef Stalin to move further to the West in Europe than the Turk had ever been. We frustrated the Japanese attempt to dominate the Asian mainland only to see China fall to Mao Tse-tung, who believes that all power comes from the barrel of a gun and is bent on putting that gun in the hands of Red guer-

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rillas everywhere from Tierra del Fuego to Timbuktu.

The New Isolationism

In the sixties our domestic troubles were of a different order, but their impact on our spirit was even more appalling than the effect of the street corner apple-selling and the CIO strikes of the thirties. The new isolationism grew as our difficulties in maintaining the 1945 division of the world became more onerous. We haven't had to face a big confrontation with the Moscow or Peking totalitarians, but that will come (with either a Munich or a war) if we lose faith and credibility in Vietnam and the eastern Mediterranean. Meanwhile our cultural life is subjected to the Machiavellian penetration of polycentric radicals who owe spiritual allegiance to Brezhnev, to Chairman Mao, or to Fidel Castro and the shade of Che Guevara. The modern "Innocents Clubs" are manipulated by a variety of offshore interests, which makes for a confusion but does not lessen the danger. Both the confusion and the danger are compounded by the insidious growth of the drug culture, which spreads an apathy that hurts the possibility of a return to sanity.

Oddly enough, one reads Gene Lyons's study of the thirties with a good bit of nostalgia for a period that combined, in Max Eastman's description, "the charms of the South Sea Bubble and the insane pathos of the Children's Crusade." As Mr. Lyons says in his author's preface to the new edition, "literally millions of Americans, some knowingly and most innocently, allowed themselves to be manipulated by a small group under tight control from Kremlin headquarters."

But the Muscovite Comrades could not have pulled the wool over the eyes of thousands of liberals from Eleanor Roosevelt on down if the Idealisms of the thirties hadn't been compelling. After all, Hitler *was* a monster. From a safe distance at a Manhattan cocktail party held to raise funds for Loyalist Spain one could feel that in offering money to support the Abraham Lincoln Brigade one was doing the work of the Lord. It was only after the courageous John Dos Passos had come back from Spain with the report that the Stalinists had usurped control of the Republican armies that one could see how the American liberals had been gulled. In reading or rereading Lyons it is the surface innocence of the thirties that induces the nostalgia. Bliss was it in that dawn to have been innocent. It took time for most of us to discover what was going on in the depths.

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The Unmentionable Famine — Three Million Starve

My own disillusionment with the Soviet utopia came in the middle thirties when Walter Duranty, the cynical Moscow correspondent of *The New York Times,* remarked casually to Simeon Strunsky and myself in the *Times* elevator one day that three million Russian peasants had died in a man-made famine in the Ukraine in 1932-33. The magnitude of Mr. Duranty's figures was appalling, but even more appalling to me, as an idealistic young journalist, was the fact that Duranty had never breathed a word about the famine in print. (After all, he had his return visa to Russia to consider, and what did the truth matter as against that.) Mr. Lyons lets the worst about all of us in the thirties be set down for posterity by printing the lists of those who signed the petitions and open letters that characterized the age. He is always generous, however, in telling when a Clifton Fadiman, or an Edmund Wilson, or a John Dewey, came to his senses and got off the Muscovite train. He dates my own conversion to common sense accurately, even though he wasn't aware of the reason for it.

The communists in the thirties had a virtually unshakeable grip on New York publishing, the American Newspaper Guild, the CIO unions in plants with a military defense potential, the youth movement, the liberal magazines, and some of the New Deal bureaucracies. Sometimes the grip was exercised directly, through card-carrying operatives. But more often the control was indirectly applied through trusted fellow-travelers, as I came to know as a member of the Time, Inc., Newspaper Guild unit.

Stalin Joins Hitler — Saws Off Liberal Limb

One could say, as it was often said in the thirties, that collaboration with the communists in a "front" was both honorable and harmless as long as it was a matter of fighting Nazis. But the day came when the perfidious Stalin signed his notorious pact with Hitler. On that day it was too late for the "four hundred fools" to recall their letter to the *Nation* expressing an ineffable trust in Stalin, a letter which happened to appear on the newsstands at the very time the headlines in the dailies were proclaiming the news of Stalin's abrupt switch. Gene Lyons extracts the last bit of farcical comedy from the discomfiture of the Stalinoid liberals in 1939 when their master sawed off the limb on which they were crowded. But Lyons is also aware of the tragedy involved when the

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supposed cream of a country's intelligentsia can be deluded into thinking thistles can grow figs.

Let us come back to the sixties, when the figs-from-thistles illusion started to take hold all over again. The big question is what happened to an educational system that failed to make use of Mr. Lyons's book during all those years between 1940 and 1971. If it had been read in the colleges, wouldn't there have been a little more skepticism among the young about the aims and uses of the New Left? Since the gods themselves contend in vain against thick-headedness, the availability of one good book probably would not have made a tremendous difference. But it might have saved a few promising boys and girls from going along with the movement that wrecked Columbia University and precipitated the tragedy at Kent State.

Again, if Gene Lyons's account of the euphoria that accompanied the birth of the Popular Front in 1935 had been digested by our leaders, would we now be taken in by the ping pong diplomacy of the Red Chinese? Ping pong may be useful to us to the end of driving a wedge between Peking and Moscow, but Mr. Lyons warns us to be sure of our motivations whenever we deal with totalitarians.

▶ STUDENT VIOLENCE by Edward Bloomberg (Washington, D.C.: Public Affairs Press, 1970, 91 pp. $3.25)

Reviewed by Allan C. Brownfeld

MOST ANALYSTS of campus turmoil seek to locate responsibility for it off campus. They blame the war, or the "Establishment," or "the system." But Professor Bloomberg, of the University of California at Davis, declares that campus violence is the natural consequence of a generation of teachers who have indoctrinated students with relativism, environmental determinism, and a rejection of the past.

Most professors do not condemn violence for "absolute relativism is the fashion right now. Few intellectuals would be prepared to defend anything as absolutely true or absolutely good. The result is that many feel – without knowing precisely why – that nothing can be really false or evil. Therefore nothing is absolutely forbidden."

What, then, is the connection between the relativism of the college faculties and the absolutism and dogmatism of the radicals. In this instance, Professor Bloomberg points out, "the former encourages the latter. The relativism of adults prevents them from condemning any behavior at all, even their own vilification. Students are

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thus free to follow their own inclinations wherever they lead." The unfortunate result is that many academicians are not even prepared to speak in behalf of academic freedom, which has been destroyed at too many campuses.

Those who believe in relativism, charges Professor Bloomberg, have abandoned the mission of the Academy: "reason is now in low repute with the New Left. It is relativism and its result, authoritarianism, which have given reason such a bad name. In relativism there is no truth. How, therefore, can reason, as it claims, discover truth? In authoritarianism, truth is absolute, but only authority can discover it. As there will inevitably be a conflict between authority and reason, the former rejects the latter." Thus, the barbarians storm the academy, and the faculties, devoutly believing that nothing is right and nothing is wrong, do nothing to defend it.

Professor Bloomberg carefully examines other logical contradictions and double standards in the New Left lexicon. Unlike radicals of the thirties who compared the American society to the allegedly idyllic life in Russia, today's radicals use no culture, past or present, as a point of comparison. When asked to what they are comparing American institutions, radicals have no answer. "It is," Professor Bloomberg declares, "to their dreams that they are comparing them." He notes: "Here we see an obvious contradiction, for they insist on the one hand that if the United States is not perfect, it is perfectly corrupt (which of course does not follow), while demanding no such perfection of themselves. . . . One cannot penetrate radical 'thought' without understanding that it applies relative – and extremely lenient – moral standards to radicals, but absolute – and intransigent – ones to society (the 'system'). Radicals generally couch their complaints in Marxist terms. . . . This explains the amusing references to the exploited workers, supposed allies of the students in the revolution. There is of course no group less revolutionary (or less exploited) than American workers, but when you accept a dogma you cannot make an exception of its fundamental thesis."

Dr. Bloomberg is especially good in his analysis of environmental determinism. If "we" are wholly innocent and yet the situation is so very bad, our troubles must be the fault of "the system"; human nature has been corrupted by evil institutions. This Rousseauistic theory has always bred violence, leading those who embrace it to conclude that their

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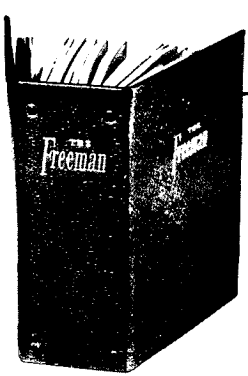
societies must be destroyed at all costs in order that human nature might display its pristine goodness. Student violence in contemporary America is sparked by a theory few students understand and fewer apply.

Students for a Democratic Society and others of the New Left are inconsistent when they condemn everyone in the so-called "Establishment." "Logically, they (the Establishment) too should be seen as victims of society rather than perpetrators of evil. This contradiction points up one of the strangest aberrations of the SDS: They arrive at two humanities, the good 'people' and the evil 'pigs,' in the fashion of those who believe man is evil. This permits them to treat 'pigs' as totalitarians treat the general population. Since, in fact, practically all Americans do fit into the pig category (most of us favor the system and own property), most of us are only getting what we deserve when we are treated violently. Pigs 'should be put in pig pens,' as SDS members are wont to say. Love becomes hate, and utopia becomes a concentration camp."

Professor Bloomberg demolishes a number of other such building blocks of radical philosophy. But the blame for campus violence does not rest with students who are immature and uninformed about both political systems and political theory. The responsibility lies elsewhere, and it is to his colleagues on the nation's college faculties that Professor Bloomberg turns in assessing the real responsibility. Wrong ideas have gained ascendancy, and our colleges cannot resume their true educational function until sounder ideas replace them.



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